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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1890.**

No. 266.

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HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. SHREVE, HENRY S. STOKES, ALBERT K. THOMPSON, AND HENRY G. KIBBE, AS KIBBE, CHAFFEE, SHREVE & COMPANY, APPELLANTS,

*vs.*

ABRAHAM G. JENNINGS.

---

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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**FILED OCTOBER 20, 1887.**



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1 The President of the United States of America to Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, & Henry G. Kibbe, Greeting:

[L. S.]

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of January, A. D. 1882, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Abraham G. Jennings and Warren P. Jennings, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 16th day of November, in the year one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and sixth.

(S'g'd) J. M. DEUEL, *Clerk.*

BRIESON & BETTS,
*Complainants' Sol'r-.*

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of January, 1882, or the bill will be taken *pro confesso* against them.

J. M. D., *Clerk.*

2 I hereby certify that on the 16th day of November, 1881, at the city of New York, in my district, I personally served the within subpœna in equity upon the within-named Edward J. Chaffee by exhibiting to him the within original and at the same time leaving with him a copy thereof.

Dated January 6th, 1882.

(S'g'd) HENRY E. KNOX,
*U. S. Marshal, S. D. N. Y.*

(File-mark:) U. S. circuit court. Filed Jan. 6, 1882. Joseph M. Deuel, clerk.

3 Circuit Court of the United States for the Southern District of New York.

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| ABRAHAM G. JENNINGS and WARREN P. JENNINGS *vs.* HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve & Co. | In Equity. No. 2. |

To the honorable the judges of the circuit court of the United States for the southern district of New York:

Abraham G. Jennings and Warren P. Jennings, doing business at the city of New York, county and State of New York, and citizens of the State of New York, bring this their bill of complaint against Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, doing business in the city of New York, county and State of New York, under the firm name and style of Kibbe, Chaffee, Shreve & Co., and who are, as your orators are informed and believe, citizens of the United States; and thereupon your orators complain and say—

That your orators, Abraham G. Jennings and Warren P. Jennings, were and are the original and first inventors of a
4 new and improved lace purling, fully described in the letters patent hereinafter mentioned, and which had not been known or used before said Abraham G. Jennings and Warren P. Jennings' said invention, and which was not for more than two years before their application for a patent, as hereinafter mentioned, in public use or on sale with their consent or allowance.

And your orators, on information and belief, further show unto your honors that said Abraham G. Jennings and Warren P. Jennings, being so as aforesaid the first inventors and discoverers of said improvement in lace purling, did, on the 29th day of July, 1879, upon due application therefor, obtain letters patent of the United States for said invention in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 218,032, whereby there was granted and secured to said Abraham G. Jennings and Warren P. Jennings, their heirs, administrators, or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and improvement, as set forth in said letters patent, which or a duly certified copy of which is ready here in court to be produced, and by virtue whereof said Abraham G. Jennings and Warren P. Jennings became and now are the sole owners of all the rights and privileges granted and secured or intended to be granted and secured in and by said letters patent.

And your orators further show unto your honors that Warren P.

Jennings, one of your orators, was and is the original and first inventor and producer of a new and original design for fringed lace fabric, fully described in the letters patent hereinafter mentioned, and which had not been known or used before said Warren P. Jennings' said invention and production, and which was not for more than two years before his application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allowance, and which he, said Warren P. Jennings, had invented and produced by his own industry, genius, efforts, and expenses.

And your orators further show unto your honors (your orator, Abraham G. Jennings, on information and belief) that said Warren P. Jennings, being so as aforesaid the first inventor and producer of said new and original design for fringed lace fabric, did, on the 12th day of February, 1878, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 10448, whereby there was granted and secured to said Warren P. Jennings, his heirs, administrators, or assigns, or intended so to be, for the term of seven years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and design, as set forth in said letters patent, which or a duly certified copy of which is ready here in court to be produced, and by virtue whereof said Warren P. Jennings became and was the sole owner of all the rights and privileges granted and secured, or intended to be granted and secured, in and by said letters patent.

And your orators further show unto your honors that afterward, to wit, on or about the 20th day February, 1878, the said Warren P. Jennings, by an instrument in writing of that date, sold, assigned, and transferred unto your orators all his right, title, and interest in and to said invention and the letters patent No. 10448 therefor granted as aforesaid, which said instrument in writing was duly recorded in the Patent Office of the United States, as by said instrument in writing or a duly authenticated copy thereof and the certificate of such recording thereto affixed, ready in court to be produced, will fully and at large appear.

And your orators further show unto your honors that by virtue of the premises your orators became and now are the sole and exclusive owners of said several letters patent and the inventions and improvements and designs described therein and of all the rights and privileges granted and secured or intended to be granted and secured thereby, and that since they became the owners thereof as aforesaid your orators have invested and expended large sums of money, and have been to great trouble in and about said invention and design, and for the purpose of carrying on the business of manufacturing and selling lace purling and fringed lace fabrics and making the same profitable to themselves and use-

ful to the public, and that said invention and design have been and are of great benefit and advantage, and that large quantities of said lace purling and fringed lace fabrics were made according to said invention and design and sold by your orators, to the great advantage of the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orators, and your orators believe that they will realize and receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented.

Yet the said defendants, well knowing the premises and rights secured to your orators as aforesaid, but contriving to injure your orators and to deprive them of the benefits and advantages which might and otherwise would accrue unto your orators from said invention and design, ever after the issuing of the said letters patent as aforesaid, and before the commencement of this suit, did, as your orators are informed and believe, without the license or allowance and against the will of your orators and in violation of your orator's rights and in infringement of the aforesaid several letters patent, at the city of New York and other places, unlawfully and wrongfully and in defiance of the rights of your orators make, construct, use, and vend to others to be used the said invention and design, and did make, construct, use, and vend to others to be used lace fabrics, each made according to and employing and containing the inventions described and claimed in both said patents, and your orators charge it to be a fact that said defendants and their confederates shall continue so to do, and that they are threatening to make the aforesaid lace fabrics in large quantities, and to supply the market therewith and to sell the same.

7 And your orators further show unto your honors that on the 4th day of October, 1879, your orators filed their bill of complaint in the circuit court of the United States for the district of Massachusetts against John E. Hodgkins and H. W. Beal, doing business as Hodgkins & Co.; that in their said bill they complained of the infringement by said defendants of design patent No. 10448, being the same design letters patent on which this present suit is brought, and prayed for an injunction and accounting against said defendants; that said defendants filed their answer to said bill on the 1st December, 1879, denying, amongst other things, the validity of said letters patent, and that the complainants had any rights under the same, and setting up the non-patentability, prior knowledge, and public use of the things patented in said letters patent; that your orators, on the 29th day of December, 1879, filed their replication to such answer, and that thereafter proofs were taken in said suit at length; that after due proceedings had said suit was reached for final hearing, and that upon due consideration thereof and after hearing arguments of counsel the court directed a decree to be entered sustaining the validity of said letters patent and the rights of your orators under the same and for an account and perpetual injunction against said defendants, and that the said decree was duly entered and the perpetual injunctions were duly issued and served on said defendants, and that the accounting under said decree was

duly proceeded with and heavy damages awarded to your orators by the master and judgment entered therefor.

And your orators further show unto your honors that on the 3d day of October, 1879, your orators filed their bill of complaint in this court against James H. Sayre, Joseph W. North and James E. Hedges, doing business as Sayre & North.

That in their said bill they complained of the infringement by said defendants of the aforesaid design letters patent No. 10448 and prayed for an injunction and account.

That said defendants duly appeared, and that thereafter, by advice of counsel, and after having examined into the validity of said patent, they acknowledged in writing the validity of said pat-
8 ent and the rights of your orators under the same, and that such acknowledgment has been filed in the clerk's office of this court, and that said defendants have since dealt in goods which are duly licensed by your orators under said letters patent.

And your orators further show unto your honors that on the 12th day of February, 1881, your orators filed their bill of complaint in this court against Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, composing the firm of Kibbe, Chaffee, Shreve & Co., of New York city; that in their said bill they alleged infringement by said defendants of the aforesaid design letters patent No. 10448 and of another patent, and prayed for an injunction and account.

That defendants appeared, by counsel, and that thereafter a motion for a preliminary injunction to restrain said defendants, as prayed in the bill of complaint, was brought to a hearing upon the affidavits and papers filed on the part of complainants and defendants, and that after argument by counsel and full consideration said motion was granted by Hon. Samuel Blatchford, circuit judge, and to the original order for said injunction and the writ of injunction on file in this court and ready to be produced your orators crave leave to refer.

And your orators further show unto your honors that on the 27th day of April, 1881, your orators filed their bill of complaint in this court agains Thomas Dolan, of Philadelphia.

That in their said bill they alleged infringement by said defendant of the aforesaid design letters patent No. 10448 and of another patent, and prayed for an injunction and account.

That defendant appeared, by counsel, and that thereafter a motion for a preliminary injunction to restrain said defendant, as prayed in the bill of complaint, was brought to a hearing upon the affidavits and papers filed on the part of complainants and defendants, and that after argument by counsel and full consideration said motion was granted by Hon. Samuel Blatchford, circuit judge, and to the original order for said injunction and the writ of injunc-
9 tion on file in this court and ready to be produced your orators crave leave to refer.

And your orators further say unto your honors that the manufacture and sale by said defendants of lace fabrics made in violation of said letters patent Nos. 10448 and 218,032 is in defiance of the

rights acquired by and secured to your orators as aforesaid and to your orators' great and irreparable loss and injury, and by which your orators have been and still are being deprived of great gains and profits which they might and otherwise would have obtained, but which have been received and enjoyed and are being received and enjoyed by the said defendants by and through their aforesaid unlawful acts and doings.

And your orators further show unto your honors, on information and belief, that said defendants have made and sold and caused to be made and sold large quantities of said lace fabrics and have a large quantity on hand which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orators do not know and pray a discovery thereof; and your orators say that the use of the said invention by said defendants and their preparation for and avowed determination to continue the same and their other aforesaid unlawful acts in disregard and defiance of the rights of your orators have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orators' rights.

And your orators pray that said defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, their firm of Kibbe, Chaffee, Shreve & Co., and their and each of their servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined provisionally and perpetually by the order and injunction of this honorable court from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said invention or any part thereof, or any lace fabrics described and claimed in said letters patent No. 218,032 or in both said letters patent Nos. 218,032 and 10448, or any lace fabrics made in accordance therewith or like or similar to those which the said defendants have heretofore made, and that the said defendants may be decreed to pay the profits unlawfully obtained by them by reason of the aforesaid infringement and the damages thereby suffered by your orators and the costs of this suit, and that your orators may have such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

And forasmuch as your orators can have no adequate relief except in this court, to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their and each of their corporal oaths, according to their and each of their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orators the profits by them acquired and the damages suffered by your orators from the aforesaid unlawful acts—

May it please your honors to grant unto your orators the writ of

injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, their firm of Kibbe, Chaffee, Shreve & Co., and their and each of their servants, agents, attorneys, and workmen and each and every of them, as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orators the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, commanding them by a certain day and under a certain penalty to be and appear in this honorable court, then and
11 there to answer the premises and to stand to and abide such order and decree as may be made against them.

And your orators will ever pray, &c.

ABRAHAM G. JENNINGS.

BRIESEN & BETTS,
*Comp'ts' Sol'rs.*
A. V. BRIESEN, *Of Counsel.*

UNITED STATES OF AMERICA,
*Southern District of New York,* } *ss.:*

On this 14th day of November, 1881, before me personally appeared Abraham G. Jennings, one of the above-named complainants, who, being by me first duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true, and that he verily believes said Abraham G. Jennings and Warren P. Jennings to be respectively the first and sole inventors and producers of the new and improved lace purling and design for fringed lace fabrics described and claimed in the said several letters patents referred to in said bill of complaint.

ABRAHAM G. JENNINGS.

Subscribed and sworn to before me this 14th day of November, A. D. 1881.

THOMAS ALEXANDER, JR.,
[SEAL.] *Notary Public, N. Y. Co.*

(Endorsed :) United States circuit court, southern district of New York. Abraham G. Jennings *et al. vs.* Henry R. Kibbe & *al.* Bill in equity. Briesen & Betts, complainants' solicitors, 229 B'dway, New York. (File mark :) U. S. circuit court. Filed Nov. 16, 1881. Joseph M. Deuel, clerk.

12 United States Circuit Court, Southern Dist. of N. Y'k. In Equity.

A. G. JENNINGS *et al.*
*vs.*
HENRY R. KIBBE *et al.*

Please enter our appearance for defendants in the above-entitled cause.

(S'g'd) GEORGE HARDING.
JOHN R. BENNETT.

Dated N. Y., Dec. 5, '81.

To clerk U. S. circuit c't.

(Endorsed:) Jennings *vs.* Kibbe & *al.* Appearance. (File mark:) U. S. circuit court. Filed Dec. 5, 1881. Joseph M. Deuel, clerk.

13 U. S. Circuit Court, Southern District of New York.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
*vs.*
HENRY R. KIBBE, EDWARD I. CHAFFEE, GEORGE H. SHREVE, HENRY E. STOKES, ALBERT K. THOMPSON, & HENRY G. KIBBE, Doing Business as Kibbe, Chaffee, Shreve & Co. — In Equity. No. 2. Docket No. 2216.

We hereby consent that Briesen & Steele be substituted as the solicitors for the complainants in the above-entitled case in our place and stead.

(S'g'd) BRIESEN & BETTS,
*Complainants' Solicitors.*

New York, 14th Feb'y, 1883.

(Endorsed:) U. S. Circuit court, south. dist. of N. Y. A. G. Jennings & *al. vs.* Henry R. Kibbe & *al.* Consent and order of substitution. Briesen & Betts. Filed Feb. 15, 1883. Joseph M. Deuel, clerk. (File-mark:) U. S. circuit court. Filed Feb. 15, 1883. Joseph M. Deuel, clerk.

14 United States Circuit Court, Southern District of New York.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
*vs.*
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve and Company. } In Equity.

The joint and several answer of Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, doing business as Kibbe, Chaffee, Shreve and Company, defendants, to the bill of complaint of Abraham G. Jennings and Warren P. Jennings, complainants.

To the honorable the judges of the circuit court of the United States in and for the southern district of New York:

These defendants, for answer to the said bill of complaint,
15 and not waiving any objections thereto, say:

I.

They admit that letters patent of the United States No. 10448 were granted to Warren P. Jennings February 12, 1878, for "design for a fringed lace fabric," but deny that the said Jennings was the original and first inventor and producer of the said "design for a fringed lace fabric" shown, described, and claimed in the said letters patent, or that the same had not been known or used by others before the date of the said alleged invention and production by the said Jennings, or that the same had not, prior to the date of the said alleged invention or production or for more than two years before his application for letters patent therefor, been in public use or on sale, or that the said Jennings invented and produced said "design for a fringed lace fabric" by his own industry, genius, efforts, and expense, or that by reason of the grant of the said letters patent the said Jennings became the sole
16 owner of the said "design for a fringed lace fabric" therein shown, described, and claimed.

II.

They have no knowledge as to the alleged assignment of February the 20th, 1878, from Warren P. Jennings to complainants, and leave complainants to make such proof thereof as they may deem necessary.

III.

They have no knowledge as to whether by virtue of the said alleged assignment the complainants became and are now the sole and exclusive owners of the said letters patent above referred to, and leave complainants to make such proof thereof as they may deem necessary.

IV.

They admit that letters patent of the United States No. 218,032, dated July the 29th, 1879, for "improvement in lace purling," were granted to the said Abraham G. Jennings and Warren P. Jen-
17 nings, but deny that the said Abraham G. Jennings and Warren P. Jennings were the original and first inventors of the said alleged "improvement in lace purling" shown, described, and claimed in the said letters patent, or that the same had not been known or used by others before the date of the said alleged invention, or that the same had not, prior to the date of their said alleged invention or for more than two years before their application for letters patent therefor, been in public use or on sale, or that by reason of the granting of the said letters patent said Abraham G. Jennings and Warren P. Jennings became the sole owners of the said alleged "improvement in lace purling" therein described and claimed.

V.

They deny, upon information and belief, that the complainants have "invested and expended large sums of money, and have been to great trouble in and about said invention and for the purpose of carrying on the business of manufacturing and selling lace
18 fabrics which embody said improvements and design and making the same profitable to themselves and useful to the trade, and that said inventions have been and are of great benefit and advantage, and that large quantities of said lace fabrics were made in accordance with said invention and sold by complainants, to the great advantage of the public, and that the public had general knowledge or acquiesced in the aforesaid rights of the complainants."

VI.

They deny that they have in any manner or way whatsoever infringed the said letters patent No. 10448 or No. 218,032 or either of them, or that they intend or threaten so to do.

VII.

They deny that they are causing complainants any loss or damage or injury whatsoever, or that the complainants have been deprived of any gains or profits which they might or otherwise
19 would have obtained and been in receipt and enjoyment of had it not been for their acts and doings.

VIII.

They admit that complainants filed a bill of complaint in the circuit court of the United States for the district of Massachusetts against John Hodgkins and H. W. Beal, doing business as Hodgkins and Beal, for alleged infringement of said letters patent No. 10448; that said defendants appeared and filed answer thereto; that issue was joined and proof taken in said cause on behalf of complainants, but they are informed and believe that no proofs

were taken by or on behalf of the said defendants, nor was any defense whatsoever introduced by them or on their behalf, and that the decree entered by the court in said suit was by reason of default on the part of the said defendants.

IX.

20 They have no knowledge as to the suit of the complainants against Sayre and North, or of the proceedings had thereunder, save as recited in the bill of complaint, and leave complainants to make such proof thereof as they may be advised is necessary.

X.

They charge, on information and belief, that the said letters patent No. 218,032, dated July 29th, 1878, are void, for that the alleged "improvement in lace trimming" therein shown, described, and claimed, or every substantial and material part thereof claimed therein as new, was, prior to the date of the said alleged invention by the said Abraham G. and Warren P. Jennings, known and used by the following-named persons at the following-named places, namely:

Thomas Dolan, in the city of Philadelphia, Pennsylvania, at his factory, in said city of Philadelphia.

Henry Colton, in the city of Philadelphia, Pa., at the factory of Messrs. Slocum, in the city of New York, New York, and elsewhere.

21 Henry A. Truitt and Cornelius Jackson, both of the city of Philadelphia, Pa., at the factory of Thos. Dolan, in said city of Philadelphia, and was, prior to the date of the said alleged invention by the said Abraham G. and Warren P. Jennings, described and shown in the following letters patent, namely:

Design patent No. 10388, dated January the 1st, 1878, to Abraham G. Jennings; design patent No. 10448, dated Feb. 12, 1878, to Warren P. Jennings.

XI.

They charge, on information and belief, that Abraham G. Jennings and Warren P. Jennings were not, either in law or in fact, joint inventors of the said alleged "improvement in lace purling" shown, described, and claimed in said letters patent No. 218,032, and that by reason thereof said letters patent are void.

XII.

They charge, on information and belief, that in view of the state of the art at or prior to the date of the granting of said letters
22 patent No. 218,032, or the date of the said alleged invention, it required no invention whatsoever to produce said alleged "improvement in lace purling," and that the same was not a patentable matter within the meaning of the law, and that by reason thereof said letters patent No. 218,032 are void.

XIII.

He charges, on information and belief, that the said letters patent No. 10448, for design for fringed lace fabric, are void, for that the said design therein shown, described, and claimed was not new with the said Warren P. Jennings, but that the same was, prior to the date of the said alleged invention and production thereof by the said Jennings, known to and used by the following-named persons at the following-named places, viz:

Henry Colton, Phila., Pa., at the factory of Messrs. Slocum, in the city of New York, and elsewhere.

Henry Boot (deceased), late of Phila., Pa., at the factory of Thos. Dolan, in said city of Phila., and elsewhere.

23 Thos. Dolan, of the city of Phila., Pa., at said city and elsewhere.

Henry A. Truitt, of Phila., Pa., at said city and elsewhere.

Cornelius Jackson, of Phila., Pa., at the factory of Thos. Dolan, in said city of Philadelphia.

William McDevitt, of Phila., Pa., at the factory of Thos. Dolan, in said city of Philadelphia, and elsewhere.

Henry R. Kibbe, of Somers, Tolland Co., Conn., at the city of Phila. and elsewhere.

—— Dunnington, of Boston, Mass., at the city of Brooklyn, N. Y., and elsewhere.

Henry Crime, of Boston, Mass., at the city of Boston, Brooklyn, N. Y., New York city, and elsewhere.

XIV.

They charge, on information and belief, that the said letters patent No. 10448 are void, for that the design for fringed lace fabric shown, described, and claimed therein was not original with the said Warren P. Jennings, nor did he invent or produce the same by his own industry, genius, effort, and expense, but that the same was

24 invented and produced by the industry, genius, efforts, and expense of —— Dunnington, now of Boston, Mass., then of Brooklyn, N. Y., who, after inventing and producing said designs for a fringed lace fabric, exhibited and explained the same to the said Warren P. Jennings, who thereupon surreptitiously and unjustly obtained the said letters patent No. 10448 for that which had prior thereto been invented by the industry, genius, efforts, and expense of the said Dunnington.

XV.

They charge, on information and belief, that the said letters patent No. 10448 are void, for that the design for fringed lace fabric shown, described, and claimed therein was not original with the said Warren P. Jennings, nor did he invent and produce the same by his own industry, genius, efforts, and expense, but that the same was invented and produced by the industry, genius, efforts, and expense of Henry Boot, deceased, late of Philadelphia, Pa., who, after inventing

25 and producing said design for fringed lace fabric, exhibited and explained the same to the said Warren P. Jennings, who

thereupon surreptitiously and unjustly obtained said letters patent No. 10448 for that which had prior thereto been invented and produced by the industry, genius, efforts, and expense of the said Boot.

XVI.

They charge, on information and belief, that the said letters patent No. 10448 are void, for that the design for a fringed lace fabric shown, described, and claimed therein was not original with the said Warren P. Jennings, nor did he invent or produce the same by his own industry, genius, efforts, and expense, but that the same was invented and produced by the industry, genius, efforts, and expense of Henry Crime, of Boston, Mass., who, after inventing and producing the said design for a fringed lace fabric, exhibited and explained the same to the said Warren P. Jennings, who thereupon surreptitiously and unjustly obtained the said letters patent
26 No. 10448 for that which had prior thereto been invented and produced by the industry, genius, efforts, and expense of the said Crime.

XVII.

They charge, on information and belief, that said letters patent No. 10448 for "design for fringed lace fabric" *is* void for want of novelty.

XVIII.

They submit that complainants are not entitled to the relief sought for in said bill of complaint, and, without admitting any matters therein charged and not sufficiently heretofore answered unto are true, pray to be hence dismissed with their costs.

(S'g'd) KIBBE, CHAFFEE, SHREVE & CO.,
P'r EDW'D J. CHAFFEE.
EDW'D J. CHAFFEE.

(S'g'd) GEORGE HARDING,
JOHN R. BENNETT,
*Counsel for Def'ts.*

27 UNITED STATES OF AMERICA,
*Southern District of New York,*
*State of New York, City and County of New York,* } *ss:*

Edward J. Chaffee, one of the defendants named in the above-mentioned cause, being duly sworn, deposes and says as follows: That the foregoing answer by him subscribed is true so far as his statements therein contained are within his own knowledge, and so far as made on information and belief he verily believes them to be true.

(S'g'd) EDW'D J. CHAFFEE.

Subscribed and sworn to before me this 7th day of February, 1882.

[NOTARIAL SEAL.] HENRY J. THORNTON,
*Notary Public, City and County of New York.*

(Endorsed:) U. S. circuit court, southern dist. of N. Y. In equity. A. G. Jennings *et al. vs.* Henry R. Kibbe & *al.* Answer. (File mark:) U. S. circuit court. Filed Feb. 7, 1882. Joseph M. Deuel, clerk.

28 Circuit Court of the United States for the Southern District of New York.

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| ABRAHAM G. JENNINGS and WARREN P. JENNINGS *vs.* HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve & Co. | In Equity. No. 2. |

The replication of Abraham G. Jennings and Warren P. Jennings, complainants, to the answer of Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, defendants:

These repliants, saving and reserving unto themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants.

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(S'g'd) BRIESEN & BETTS,
*Solicitors for Complainants.*

29 (Endorsed:) United States circuit court, south. district of N. Y. In equity. A. G. Jennings and another *vs.* Henry R. Kibbe *et al.* No. 2. Replication. Briesen & Betts, solicitors for complainants, No. 229 Broadway, New York, N. Y. (File-mark:) U. S. circuit court. Filed Mar. 6, 1882. Joseph M. Deuel, clerk.

30 Circuit Court of the United States for the Southern District of New York.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS, Complainants,
*vs.*
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve & Co., Defendants.
} In Equity. No. 2. Docket No. 2216.

Please take notice that we shall proceed to take proofs for final hearing on the part of the complainants, under the 67th rule of the Supreme Court for courts of equity, as amended, and in accordance with the statutes in such cases made and provided and in pursuance of the rules and practice of this court, before John A. Shields, Esq., an examiner of this court, under said statutes and rules, at our office, No. 229 Broadway, New York city, N. Y., on the 27th day of April, 1882, at 10 o'clock in the forenoon.

We desire the evidence to be adduced in this cause to be taken orally.

You are invited to attend and cross-examine the witnesses produced. The examination will be adjourned to such time and place as may be required without further notice.

Dated New York city, 18th April, 1882.

Very respectfully, BRIESEN & BETTS,
*Compl'ts' Solicitors.*

To George Harding and John R. Bennett, Esqs., def'ts' solicitors.

31 Circuit Court of the United States for the Southern District of New York.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS, Complainants,
*vs.*
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve & Co., Defendants.
} In Equity. No. 2. Docket No. 2216.

32 Circuit Court of the United States for the Southern District of New York.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS
*vs.*
THOMAS DOLAN.
} In Equity. No. 2. Docket No. 2196.

Testimony taken on behalf of the complainants, under the 67th rule of the Supreme Court of the United States, as amended, before John A. Shields, Esq., a standing examiner of this court.

NEW YORK, *April* 27, 1882—10 a. m.

Met pursuant to notice.

Present: Samuel R. Betts, Esq., counsel for complainant; John R. Bennett, Esq., counsel for defendant.

described in design patent No. 10448, now shown you, the same being marked "Exhibit Design Letters Patent?

36 A. I have read and believe I understand it.

Q. 5. Have you given attention in selecting fabrics for purchase to the extent usually devoted by ordinary purchasers?

A. I suppose I have, having at times purchased different textile fabrics.

Q. 6. How does the appearance of the fringes on Exhibit Kibbe Nubia A and Exhibit Kibbe Nubia B, in your estimation, compare with the appearance of the fringes that are shown in said Exhibit Design Letters Patent?

A. The fringe of Kibbe Nubia B resembles very closely, in my judgment, the fringe shown in Jennings Design Patent; the fringe of Kibbe Nubia A is a good deal like it, but has some loops omitted. The upper part of the fringe is, I think, very similar.

Q. 7. Would, in your estimation, an innocent purchaser be led to take the one of these fringes for the other?

A. I think very probably a purchaser might do so, especially in case of the Kibbe Nubia B. The Kibbe Nubia A would not be so readily mistaken for it, unless the lower ends of the fringe were cut off.

T. O'CONOR SLOANE, *Ph. D.*

Sworn before me—
JOHN A. SHIELDS,
*Examiner, &c.*

(Complainants rest their *prima facie* case.)

37 COMPLAINANTS' EXHIBIT ASSIGNMENT DESIGN PATENT.

Whereas I, Warren P. Jennings, of Brooklyn, in the county of Kings and State of New York, did obtain letters patent of the United States of America for a certain new and original design for a fringed lace fabric (term of patent, 7 years), which letters patent bear date the twelfth day of February, eighteen hundred and seventy-eight, and are numbered 10448;

And whereas Warren P. Jennings and Abraham G. Jennings, both of Brooklyn, in the county of Kings and State of New York, are desirous of acquiring all my right, title, and interest in and to said invention:

Now, this indenture witnesseth that, for and in consideration of the sum of one dollar to me, the said Warren P. Jennings, in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and do hereby assign, sell, and set over, unto the said Warren P. Jennings and Abraham G. Jennings all the right, title, and interest which I have in the said invention as secured to me by said letters patent.

The same to be held and enjoyed by the said Warren P. Jennings and Abraham G. Jennings for their own use and behoof, and for the use and behoof of their legal representatives, to the full end of the term for which said letters patent are granted as fully and

entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

In testimony whereof I hereunto set my hand and affix my seal this 20th day of February, eighteen hundred and seventy-eight.

WARREN P. JENNINGS. [L. S.]

Sealed and delivered in presence of—
THOS. STRINGER.

38 COMPLAINANTS' EXHIBIT "TRUITT FIRST AFFIDAVIT." S. R. B., U. S. Comm'r. Oct. 12, 1883.

United States Circuit Court, Southern District of New York. In Equity.

ABRAHAM G. JENNINGS *et al.*
*vs.*
HENRY R. KIBBE *et al.*

STATE OF NEW YORK,
*County of New York,* } ss:

HENRY A. TRUITT, being first duly sworn, deposes and says as follows:

I am thirty-five years of age; reside in the city of Philadelphia, and am with Thomas Dolan and Company, of Philadelphia, general manufacturers, and am general manager of the knit goods department, which position I have occupied since the year 1872. I have been with Mr. Dolan continuously since 1861, and during all that time employed in the knit goods department.

During the year 1865 Henry Boot, a professional lace designer, entered the employ of Mr. Dolan, and remained in his employ as designer of knitted and lace fabrics until the year 1875. Shortly after entering the employ of Mr. Dolan, and in the year 1865, or fore part of 1866, the said Boot designed a fabric consisting of pillars provided with laterally projecting loops joined in diamond shape, so as to produce a fabric having a light, airy appearance. The design made by him was shown to Mr. Dolan, and, being approved by him, was placed upon an English rotary warp loom, and quantities of fabric of that design manufactured, and continued manufacturing such fabric at various times until the year 1870. The design of the fabric was the same, though in some cases we used two central pillars instead of one. Usually the loops projected laterally from
39 the central stem at a regular distance throughout, though in some cases the loops projected at irregular distances from the central pillar. All the fabric of that design manufactured during the period from 1865 to 1870 was manufactured upon our English rotary warp looms.

Since I have been with Mr. Dolan it has been his practice to keep a sample of each and every kind of fabric showing the design or pattern manufactured by him. On referring to the sample books in which such specimens are kept, I find several pieces of the fabric de-

signed by Mr. Boot and manufactured by us during the period from 1865 to 1870, as follows: In book marked "Samples to 1869, Thomas Dolan," three pieces, which I have marked "Exhibit Dolan No. 1," "Exhibit Dolan No. 2," and "Exhibit Dolan No. 3" respectively; in book marked "Samples to 1869, Thomas Dolan," one piece, which I have marked "Exhibit Douglass;" in book marked "Samples, 1870," three pieces, marked "Exhibit Dolan No. 1," "Exhibit Dolan No. 2," and "Exhibit Dolan No. 3" respectively; and in book marked "Samples, 1872," one piece, marked "Exhibit Dolan No. 1." Each of those pieces of fabric, marked as above, were taken by me from the original fabric manufactured at Mr. Dolan's factory during the years 1865 to 1870, at the time they were manufactured from the design made by Henry Boot and filed away by me for future reference, according to our practice at that time.

Large quantities of fabric, such as shown by the several exhibit fabrics in the books above referred to, were manufactured by us during the period from 1865 to 1870. After the fabric was taken from the loom it was brought to the wareroom where it was cut ready, to be made up into the desired articles and then sent to the sewing department. Such fabric was made into children's caps, hoods, nubias, &c., and used for trimming of hoods and nubias. The nubias marked "Exhibit Truitt Nos. 1 and 2," show the way in which such fabrics was used in making up hoods and trimming the same. The various articles made of such fabric, in whole or part, were sent by us to our commission agents, and by them sold to parties residing throughout the country.

Our books show that we first commenced shipping from the factory articles made of such fabric in the year 1866, and that we sent to Root & Kibbe, of Philadelphia, and Townsend & Yale, of New York, our agents, nubias, hoods, caps, and cloaks made from fabric such as shown by the several exhibits, which were sold by them. Our descriptive book, in which we keep a description of each article made, together with an estimate of its cost of production, contains a description of the nubias, hoods, caps, and cloaks made of material the same as the exhibits contained in the sample books. Those entries are in my own handwriting and were made by me at the time the goods were first manufactured, the first description of articles made of such material being dated May 31, 1866. After that date the descriptive book contains a separate description of each of the various other articles into which such fabric was made, together with an estimate of its cost. It has been one of my duties since coming with Mr. Dolan and up to the present time to obtain a sample of each and every fabric when manufactured, showing the design and pattern, file the same away, and see that it is properly preserved.

For the first few years the samples were placed in small scrapbooks of irregular sizes, and also pasted on paper and filed away, properly numbered and dated, showing when they were manufactured. This we continued doing until about the year 1869, when, being annoyed by the frequent loss of samples, we decided to get books of uniform size, properly numbered, and transfer the samples

into such books, and thereafter keep a yearly sample book, which we did and have done since that time. The book marked "Samples to 1869, Thomas Dolan," contains samples of fabric manufactured by us prior to 1869. Those samples were taken from the sample books and files heretofore referred to and placed in that book during the years 1869 and 1870. All samples contained in that book were made prior to 1869, and no samples have been placed in that book since that time. The book and the samples contained therein have since been in my charge. The fabric "Exhibit Douglas" is an original exhibit, made prior to 1869, and placed in that book during that year. There is another book, marked "Samples to 1869, Thomas Dolan," showing that at the time we changed the samples from the old books and files heretofore referred to there was sufficient to fill two books. The samples contained in the second book, marked "Samples to
1869, Thomas Dolan," were all made prior to that time and
41 placed in the book during the years 1869 and 1870. Those
are the original samples, and no samples have been added to that book since that time. The fabrics "Exhibit Dolan No. 1," "Exhibit Dolan No. 2," and "Exhibit Dolan No. 3" are pieces of original fabric, and were taken from the old sample books and files and placed in this book during the years 1869 and 1870.

The book marked "Samples, 1870," contains samples of knit goods made by us prior to and during that year. They are original samples, and none have been placed in the books since that time. The fabric marked "Exhibit Dolan No. 1" and "Exhibit Dolan No. 2" are pieces of the original fabric made by us prior to that time, and have been in that book since placed there in 1870. The book marked "Samples, 1872," is the sample book for that year, and contains only samples of material made during that year and prior thereto. They are original samples, and the sample fabric "Exhibit Dolan No. 1" is a piece of the original fabric manufactured prior to 1872. Each of the three sample books last referred to have since the samples were placed in them been in my charge. No one of those exhibit fabrics have been taken from the sample books since they were placed there at the dates above given, with the exception of fabric "Exhibit Dolan No. 3," in "Samples to 1869, Thomas Dolan," which I had occasion last year to take out for reference in making patterns, and was afterwards placed back by me. Those same sample books contained two other pieces of that same fabric which I had occasion to remove from the books, one of which is attached to the affidavit of William O'Neil, and the other was taken out some two years ago for reference in making the patterns, and has been lost. At the time this fabric was made I named it "seaweed," as it was my practice to give a name to each and every fabric manfactured, by which I could designate it. It is by that name that I have been enabled to trace it and so clearly recall it to my mind. The knit lace fabric which we are now manufacturing, and which is shown by the "Exhibit Kibbe, Chaffee & Co.," was taken from and is of precisely the same design as the exhibit fabrics contained in the several sample books above referred to. It consists of central pillars provided with regular laterally projecting loops joined to-

gether in diamond shapes. We have not since January 1,
42 1870, manufactured any such fabric having irregular laterally projecting loops, nor is it our intention to do so. Our design calls for and our looms are so arranged as to produce only a fabric consisting of pillars provided with regular projecting loops. After the fabric is taken from the loom it is not handled or manipulated in any way to adjust or change the length of the loops, so that they could be said to be irregular laterally projecting loops. Should any fabric be produced having irregular laterally projecting loops it would be purely accidental and owing to the irregular running of the machine, and, if noticed by us, would be condemned and not permitted to go out as finished.

"Exhibits Dolan Nos. 1 and 2," in book marked "Samples, 1870," show a fabric consisting of pillars provided with irregular laterally projecting loops, and, having manufactured large quantities of such fabric prior to 1870, we should not hesitate to manufacture such fabric now, should we so desire. We are not making, nor have we made, since January 1, 1877, any knitted fringed lace fabric. I do not consider that the extended ends of our nubias are in any sense a fringe. They are a portion of the fabric itself and of precisely the same design, the only difference being that they are allowed to run straight out instead of being joined together.

HENRY A. TRUITT.

Subscribed and sworn to before me this 1st day of April, A. D. 1881.

HENRY C. CROSSMAN,
[L. S.] *Notary Public, Kings Co.*

Certf. filed in N. Y. Co.

(Endorsed :) D. 1926. United States circuit court, southern district of New York. A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Aff't of Henry A. Truitt. John R. Bennett, solicitor and counsel for def'ts. U. S. circuit court. Filed April 5, 1881. Joseph M. Deuel, clerk.

43 COMPLAINANTS' EXHIBIT "TRUITT SECOND AFFIDAVIT." S. R. B., U. S. Comm'r. Oct. 12, 1883.

United States Circuit Court, Second District of New York. In Equity.

A. G. JENNINGS & *al.*
*vs.*
HENRY R. KIBBE & *al.*

STATE OF NEW YORK,
*City and County of New York,* } *ss:*

HENRY A. TRUITT, being duly sworn, deposes and says:

I have heretofore given an affidavit in the above-entitled cause which was used in opposition to the motion for preliminary injunc-

tion, and I therein stated my connection with the firm of Thomas Dolan & Co., manufacturers of the alleged infringing fabric. In said former affidavit I stated at length as to the manufacture and sale of the fabric such as Exhibit Dolan No. 3, in book marked Samples to 1869, Thomas Dolan, in large quantities prior to 1870, and that the said exhibit fabric was a piece of the original fabric manufactured prior to that time, taken from the said original fabric and placed in the book by me, and has remained in said book since that time, and which book has been in my keeping. Since the granting of the injunction in the above-entitled case, on April 1st, 1881, no nubias have been manufactured and shipped by Thomas Dolan & Co. to Kibbe, Chaffee, Shreve & Co. other than as shown by the nubias contained in the box marked Defendants' Exhibit Dolan Nubias. I received instructions from Mr. Dolan that the nubias should be woven in a perfectly flat condition and packed in the condition in which they were taken from the loom, and
44 in that condition shipped to Kibbe, Chaffee, Shreve & Co. to be sold. All nubias sent to Kibbe, Chaffee, Shreve & Co. since the granting of the injunction have been carefully examined before being shipped to see that they were packed in accordance with the above instructions, and all that were shipped did present to the eye the same appearance as the nubias in the box marked Defendants' Exhibit Dolan Nubia. The nubias, such as we have manufactured since the granting of the injunction shown by the nubias contained in the box marked Exhibit Dolan Nubia, were taken from the sample Exhibit Dolan Nubia No. 3. I have examined the nubias marked Exhibit Kibbe Nubia Nos. 1, 2, and 3, and can state positively that no nubias presenting such an appearance to the eye have been shipped by us to Kibbe, Chaffee, Shreve & Co. since the 1st day of April, 1881. If those nubias were manufactured by Thomas Dolan & Co. they have, since leaving our factory, been taken from the box and intentially pulled or stretched so as to give them a different appearance to the eye. I have compared the nubias such as we are now making, as contained in the box Exhibit Dolan Nubia with the nubia Exhibit Kibbe Nubia, such as Kibbe, Chaffee, Shreve & Co. were enjoined from selling, and found them to present an entirely different appearance to the eye, and in my opinion they are different designs. So great is the difference that I do not think it possible that one could be taken for the other or that an ordinary purchaser would purchase one for the other or be deceived into so doing. The nubias Exhibit Kibbe Nubias Nos. 1, 2, and 3, even in the condition in which they were when I saw them to-day at the office of Messrs. Briesen & Betts, present a different appearance to the eye from the nubias which Kibbe, Chaffee, Shreve & Co. were enjoined from selling, and in my opinion one would not be taken for the other, nor would an ordinary purchaser be deceived into buying one for the other. I was present on May 25, 1881, at the interview between Mr. Renwick and Mr. Jackson, when Mr. Renwick instructed him to reproduce the fabric Exhibit Dolan No. 3, and carefully noted the same, and was instructed by Mr. Renwick to see that Mr. Jackson carried out his instructions, which I did. I have

read the affidavit of Mr. Jackson, and the statements therein contained with reference to the reproduction of said fabric are
45 true. As per instructions received from Mr. Bennett I had one of the looms upon which we manufactured the fabric Exhibit Dolan No. 3, prior to 1870, set up in a convenient place for the purpose of reproducing the fabric Exhibit Dolan No. 3 in presence of the complainant, their counsel, and expert, and was advised by him that he had invited them to be present on Friday, June 24th, and on Monday, June 27th, but neither the complainants, their counsel, or expert put in an appearance on either of those days. The fabric which Mr. Jackson manufactured as being a reproduction of the Exhibit Dolan No. 3, when taken from the loom, presented the same appearance to the eye as the fabric Exhibit Dolan No. 3 did originally when taken from the loom, and said fabric when pulled presents to the eye the same appearance that the fabric Exhibit Dolan No. 3 did when taken from the loom and pulled, and in which condition we sold it. The pulling of that fabric gives to the pillars a slight twist, causing the loops of equal lengths projecting from either side of the pillars to project up out of the general plane of the fabric, and such fabric cannot be manufactured and pulled without giving it that effect.

HENRY A. TRUITT.

Subscribed and sworn to before me this 21st day of October, 1881.

NATHAN MANASSE,

[NOTARIAL SEAL.] *Notary Public, Kings and N. Y. Cos.*

(Endorsed:) No. D. 1926, sess. 18. United States circuit court, southern district of New York. A. G. Jennings & *al. vs.* H. R. Kibbe & *al.* Affidavit of Henry A. Truitt. John R. Bennett, solicitor & counsel for def'ts. Filed in court Oct. 22, 1881. T.

46 COMPLAINANTS' EXHIBIT "TRUITT THIRD AFFIDAVIT."

S. R. B., U. S. Comm'r. Oct. 12, 1883.

United States Circuit Court, Southern District of N. Y. In Equity.

ABRAHAM G. JENNINGS *et al.*
*against*
THOMAS DOLAN.

STATE OF PENNSYLVANIA, }
*County of Philadelphia,* } *ss:*

HENRY A. TRUITT, being first duly sworn, deposes and says as follows:

I am thirty-five years of age, reside in the city of Philadelphia, and am with Thomas Dolan & Co., of Philadelphia, general manufacturers, and am general manager of the knit goods department, which position I have occupied since the year 1872. I have been

with Mr. Dolan continuously since 1861, and during all that time employed in the knit goods department.

During the year 1865 Henry Boot, a professional lace designer, entered the employ of Mr. Dolan, and remained in his empl oy as designer of knitted and lace fabrics until the year 1875. Shortly after entering the employ of Mr. Dolan and in the year 1865 or fore part of 1866, the said Boot designed a fabric consisting of pillars provided with laterally projecting loops joined in diamond shape, so as to produce a fabric having a light airy appearance. The design made by him was shown to Mr. Dolan, and, being approved by him, was placed upon an English rotary warp loom and quantities of fabric of that design manufactured, and continued manufacturing such fabric at various times until the year 1870. The de-
47 sign of that fabric was the same, though in some cases we used two central pillars instead of one. Usually the loops projected laterally from the central stem at a regular distance throughout, though in some cases the loops projected at irregular distances from the central pillar. All the fabric of that design manufactured during the period from 1865 to 1870 was manufactured upon our English rotary warp looms.

Since I have been with Mr. Dolan it has been his practice to keep a sample of each and every kind of fabric showing the design or pattern manufactured by him. On referring to the sample books in which such specimens are kept I find several pieces of the fabric designed by Mr. Boot and manufactured by us during the period from 1865 to 1870, as follows: In book marked "Samples to 1879, Thomas Dolan," three pieces, which I have marked "Exhibit Dolan No. 1," "Exhibit Dolan No. 2," and "Exhibit Dolan No. 3" respectively; in book marked "Samples to 1869, Thomas Dolan," one piece, which I have marked "Exhibit Douglass;" in book marked "Samples, 1870," three pieces, marked "Exhibit Dolan No. 1," "Exhibit Dolan No. 2," and "Exhibit Dolan No. 3" respectively; and in book marked "Samples, 1872," one piece, marked "Exhibit Dolan No. 1." Each of those pieces of fabric marked as above were taken by me from the original fabric manufactured at Mr. Dolan's factory during the years 1865 to 1870 at the time they were manufactured from the design made by Henry Boot, and filed away by me for future reference, according to our practice at that time.

Large quantities of fabric such as shown by the several exhibit fabric books above referred to were manufactured by us during the period from 1865 to 1870. After the fabric was taken from the loom it was brought to the wareroom, where it was cut, ready to be made up into the desired articles, and then sent to the sewing department. Such fabric was made into children's caps, hoods, nubias, &c., and used for trimming of hoods and nubias. The nubias marked "Exhibits Truitt Nos. 1 and 2" show the way in which such fabric was used in making up hoods and trimming the same. The various articles made of such fabric, in whole or part, were sent by us to our commission agents, and by them sold to parties residing throughout the country.

Our books show that we first commenced shipping from
48 the factory articles made of such fabric in the year 1866, and that we sent to Root & Kibbe, in Philadelphia, and Townsend & Yale, of New York, and our agents nubias, hoods, caps, and cloaks made from fabric such as shown by the several exhibits, which were sold by them. Our descriptive book, in which we keep a description of each article made, together with an estimate of its cost of production, contains a description of the nubias, hoods, caps, and cloaks made of material the same as the exhibits contained in the sample book. Those entries are in my own handwriting and were made by me at the time the goods were first manufactured, the first description of articles made of such material being dated May 31, 1866. After that date the descriptive book contains a separate description of each of the various other articles into which such fabric was made, together with an estimate of its cost. It has been one of my duties since coming with Mr. Dolan and up to the present time to obtain a sample of each and every fabric when manufactured showing the design and pattern, file the same away, and see that it is properly preserved.

For the first few years the samples were placed in small scrap books of irregular sizes, and also pasted on paper and filed away, properly numbered and dated, showing when they were manufactured. This we continued doing until the year 1868, when, being annoyed by the frequent loss of the samples, we decided to get books of uniform size, properly numbered, and transfer the samples into such books and thereafter keep a yearly sample book, which we did and have done since that time. The book marked "Samples to 1869, Thomas Dolan," contains samples of fabric manufactured by us prior to 1869. Those samples were taken from the sample books and files heretofore referred to and placed in that book during the years 1869 and 1870. All samples contained in that book were made prior to 1869, and no samples have been placed in that book since that time. The book and the samples contained therein have since been in my charge. The fabric "Exhibit Douglass" is an original exhibit made prior to 1869 and placed in that book during that year. There is another book marked "Samples to 1869, Thomas Dolan," showing that at the time we changed the samples from the old books and files heretofore referred to there was sufficient to fill two books. The samples contained in the second
49 book marked "Samples to 1869, Thomas Dolan," were all made prior to that time and placed in the book during the years 1869 and 1870. These are the original samples, and no samples have been added to that book since that time. The fabrics "Exhibit Dolan No. 1," "Exhibit Dolan No. 2," and "Exhibit Dolan No. 3" are pieces of original fabric, and were taken from the old sample books and filed and placed in the book during the years 1869 and 1870.

The book marked "Samples, 1870," contains samples of knit goods made by us and prior to and during that year. They are original samples, and none have been placed in the book since that time. The fabric marked "Exhibit Dolan No. 1" and "Exhibit Dolan No.

2" are pieces of the original fabric made by us prior to that time, and have been in that book since placed there in 1870. The book marked "Samples, 1872," is the sample book for that year and contains only samples of material made during that year and prior thereto. They are original samples, and the sample fabric "Exhibit Dolan No. 1" is a piece of the original fabric manufactured prior to 1872. Each of the three sample books last referred to have, since the samples were placed in them, been in my charge. No one of those exhibit fabrics have been taken from the sample books since they were placed there at the dates above given, with the exception of fabric "Exhibit Dolan No. 3," in "Samples to 1869, Thomas Dolan," which I had occasion last year to take out for reference in making patterns, and was afterwards placed back by me. Those same sample books contained two other pieces of that same fabric which I had occasion to remove from the books, one of which is attached to the affidavit of William O'Neil and the other was taken out some two years ago for reference in making patterns and has been lost. At the time this fabric was made I named it "seaweed," as it was my practice to give a name to each and every fabric manufactured by which I could designate it. It is by that name that I have been enabled to trace it and so clearly recall it to my mind. The knit lacework fabric which we are now manufacturing and which is shown by the "Exhibit Kibbe, Chaffee & Co." was taken from and is of precisely the same design as the exhibit fabrics contained in the several sample books above referred to. It consists of central pillars provided with regular laterally projecting loops joined together in diamond shapes. We have not, since January 1, 1870, manufactured any such fabric having irregular laterally projecting loops, nor is it our intention to do so. Our design calls for and our looms are so arranged as to produce only a fabric consisting of pillars provided with regular projecting loops.

After the fabric is taken from the loom it is not handled or manipulated in any way to adjust or change the length of the loops so that they could be said to be irregular laterally projecting loops. Should any fabric be produced having irregular laterally projecting loops, it would be purely accidental and owing to the irregular running of the machines, and if noticed by us would be condemned and not permitted to go out as finished.

"Exhibits Dolan Nos. 1 and 2," in book marked "Samples, 1870," show a fabric consisting of pillars provided with irregular laterally projecting loops, and, having manufactured large quantities of such fabric prior to 1870, we should not hesitate to manufacture such fabric now should we so desire. We are not making nor have we made since January 1, 1877, any knitted fringed lace fabric. I do not consider that the extended ends on our nubias are in any sense a fringe. They are a portion of the fabric itself and of precisely the same construction, the only difference being that they are allowed to run straight out instead of being joined together.

HENRY A. TRUITT.

Subscribed and sworn to before me the 14th day of December, 1881.

R. S. CHILDS, JR.,
[SEAL.] *Notary Public.*

(Endorsed:) No. E. 2196. Sess. 18, United States circuit court, southern district of New York. Abr. G. Jennings *et al. vs.* Thomas Dolan. Aff't of Henry A. Truitt. John R. Bennett, solicitor and counsel for defendant. U. S. circuit court. Filed Feb'y 21, 1882. Joseph M. Deuel, clerk.

51 COMPL'TS' EXHIBIT TRUITT FOURTH AFFIDAVIT. S. R. B., U. S. Comm'r. Oct. 12, 1883.

United States Circuit Court, Southern District of New York. In Equity.

ABRAHAM G. JENNINGS *et al.*
*vs.*
THOMAS DOLAN.

STATE OF PENNSYLVANIA,
*City and County of Philadelphia,* } *ss:*

Henry A. Truitt, being first duly sworn, deposes and says that he has heretofore given an affidavit entitled in this cause, and which affidavit is a duplicate of an affidavit sworn to by him on the 1st day of April, 1881, entitled in the case of "Jennings *et al. vs.* Kibbe *et al.;*" that in said affidavit he stated at length as to the manufacture of certain fabrics designed by and manufactured under the directions of one Henry Boot, and during the period from 1865 to 1870, at the factory of Thomas Dolan, in said city of Philadelphia, samples of which fabrics were contained in large sample books therein referred to; that subsequently he gave another affidavit in the same case, sworn to October 21st, 1871, in which he stated: "In said former affidavit I stated at length as to the manufacture and sale of fabrics such as 'Exhibit Dolan No. 3,' in book marked 'Samples to 1869, Thomas Dolan,' in large quantities prior to 1870, and that the said exhibit fabric was a piece of the original fabric manufactured prior to that time and taken from said original fabric and placed in the book by me, and has remained in said book since that time, and which book has been in my keeping;" that between the years 1865 and 1870
52 fabric of precisely the same construction as "Exhibit Dolan No. 3," in book marked "Samples to 1869, Thomas Dolan," was manufactured at the factory of said Dolan, in the warp loom department, by Henry Boot and Cornelius Jackson, upon a rotary warp loom; that "Exhibit Dolan No. 3" is a piece of the original fabric manufactured at that time, and was taken and placed by me in the sample book, in the same position which it now occupies, at or about the time said fabric was manufactured; that said "Exhibit Dolan No. 3" has always occupied the same place in said sample book, and has never been taken out or removed from the said book

except on one occasion, which was during the latter part of the year 1879 or the fore part of the year 1880, when it was taken out by deponent for the purpose of reference and special examination preparatory to the manufacture of a fabric of substantially the same construction, being the fabric that was before the court on motion for injunction in the case of "Jennings *et al. vs.* Kibbe *et al.;*" that my reason for removing the sample from said book was to have it close at hand where I was then working and be more convenient; that said sample was out of the book but a very short time and not out of deponent's possession, and as soon as he was through with said sample it was returned by him to the same place in the book that it was before being taken out; that said "Exhibit Dolan No. 3" was originally pasted to the paper at both ends, and so remained until removed by deponent, as above stated; that said sample book has always remained in his possession, and was subject to examination only by Mr. Dolan, Mr. Salmon, Mr. Boot, Mr. Jackson, and deponent, and no samples were taken out by any one except himself; that he has frequently taken other samples out of the book when occasion required, but generally returned them, except in such cases as he thought them of no value; that fabric "Exhibit Dolan No. 3," manufactured at said Dolan's factory, was made into various articles, such as shawls, hoods, children's cloaks, and the like, and sold to their trade throughout the country; that he has known of the fabric "Exhibit Dolan No. 3" being in the book marked "Samples to 1869, Thomas Dolan," since placed there, and since that time he has frequently seen and examined it; that said sample book has been used continuously by him as a book of reference in the preparation of new designs for knitted fabric to be manufactured by said Dolan each season; that since the year
53 1870 there has not been a year in which deponent has not seen the fabric "Exhibit Dolan No. 3," as deponent has occasion many times during each year to refer to said book and examine the samples contained therein, and frequently he has had occasion to refer to said sample book several times in one day; that since the year 1875 Cornelius Jackson, foreman of the knit goods department, has had occasion to repeatedly refer to and examine the sample contained in book marked "Samples to 1869, Thomas Dolan;" that deponent is positive that no such fabric has been made at the factory of said Dolan since Henry Boot left, in the year 1875, and that none was manufactured for two or three years prior to said Boot's leaving; that he has read the affidavits of Henry Henson, William Ward, James Rose, William Radford, and Thomas Langham, entitled in this cause and forming a part of complainant's moving papers; that said Henson, during all the time he was employed by said Dolan, was engaged in the warping and spooling room, on the third floor of the building, being two floors above the room in which the warp looms were located and where the fabric "Exhibit Dolan No. 3" was made; that said Henson had no reason whatever to go into the room where the warp machines were located unless sent for by the foreman, which would only be in case of warps not being properly made; that he could not possibly have known

of all the various fabrics that were being manufactured from time to time upon the looms; that the said Henson received his orders from Mr. Salmon, superintendent of the mill, and in ordering warps said Salmon would send the material to the department in which Henson was employed, with instruction to make a certain warp, without stating for what purpose the fabric or warp was intended; that there were 17 warp looms in the room, all of which were generally in operation and making several different kinds of fabric, and that in the course of a year a great variety of knitted fabrics were manufactured upon said warp looms; that William Radford, as appears from said Dolan's books, did not enter the employ of said Dolan & Co. until June, 1871, and only remained there until December, 1872; that Thomas Langham, during the time he first worked at said Dolan's factory, was employed on circular machine in the basement of the factory, and after that was employed in the department where the double-rib machines were located;
54 that he was never employed in the department where the warp looms were located and where fabric "Exhibit Dolan No. 3" was manufactured until the year 1875, which was after they had manufactured fabric such as "Exhibit Dolan No. 3;" that the said Langham could not know and had no opportunity of knowing or seeing whether or not the fabric "Exhibit Dolan No. 3" was or was not manufactured upon the rotary warp loom during the time said Langham remained in said Dolan's employ.

HENRY A. TRUITT.

Subscribed and sworn to before me this 15th day of December, A. D. 1881.

R. S. CHILD, JR.,
[L. S.] *Notary Public.*

(Endorsed:) E. 2196. United States circuit court, southern district of New York. A. G. Jennings *et al. vs.* Thomas Dolan. Aff't of Henry A. Truitt. John R. Bennett, solicitor and counsel for def't. U. S. circuit court. Filed Feb. 21, 1882. Joseph M. Deuel, clerk.

55 COMPLAINANTS' EXHIBIT BUTTON AFFIDAVIT. S. R. B., U. S. Com'r. January 23, 1884.

United States Circuit Court, Southern District of New York. In Equity.

JENNINGS
*vs.*
DOLAN.

JENNINGS
*vs.*
KIBBE *et al.*

A. G. JENNINGS *et al.*
*vs.*
THOMAS DOLAN. No. 2.

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York*, } *ss:*

CONYERS BUTTON, being duly sworn, deposes and says:

I am 44 years of age, and am a member of the firm of Conyers Button & Co., of Germantown, near Philadelphia, Pennsylvania. My firm is largely engaged in the manufacture of knit nubias, shawls, and goods of that character. In October, 1879, my firm of Conyers Button & Co. took a license under the Jennings design patent No. 10448, and we have as such licensees manufactured and sold a very large number of nubias and articles of that character made under said Jennings design patent, and we have paid to the Messrs. Jennings large sums as royalties therefor.

In May, 1880, my firm of Conyers Button & Co. took a new license from the Messrs. Jennings, which gave us the right to manufacture and sell goods made under and in accordance with design letters patent No. 10448, dated February 12, 1878, and letters patent No. 218,032, dated July 29, 1879, the two letters patent upon
56 which this suit is brought, and also under design patent No. 10388. By this licence we obtained the privilege of making nubias and other articles of purl lace fabrics of either the single or double pillar under said patents and upon the payment of a regular royalty by us for the privilege. The firm of Conyers Button & Co. have manufactured large numbers of nubias under said agreement since the date thereof and up to the present time and have paid large sums to tne Messrs. Jennings as royalties for the patent rights granted by said agreement.

Mr. Thomas Dolan, the defendant in this case, is a Philadelphia manufacturer and I am brought in direct competition with him there, and his selling agents, Messrs. Kibbe, Chaffee, Shreeve & Co. in New York, compete directly with my New York selling agents' Messrs. Townsend & Yale.

CONYERS BUTTON.

Subscribed and sworn to before me this twenty-ninth day of November, 1881.

WILLY G. E. SCHULTZ,
[L. S.] *Notary Public, Kings Co., N. Y.*

Certificate filed N. Y. Co.

57 COMPLAINANTS' EXHIBIT RADFORD AFFIDAVIT. S. R. B., U. S. Comm'r. Jan. 23, 1884.

United States Circuit Court, Southern District of New York. In Equity.

JENNINGS
*v.*
DOLAN.

JENNINGS
*v.*
KIBBE.

A. G. JENNINGS *et al.*
*vs.*
THOMAS DOLAN. } No. 2.

SOUTHERN DISTRICT OF NEW YORK, }
*City and County of New York,* } *ss:*

WILLIAM RADFORD, being duly sworn, deposes and says:

I am 49 years of age, reside in the city of Philadelphia, and am by occupation a knitter. I came from England to this country, landing on the 2d of March, 1864. For the last 37 years I have been engaged in England and in this country in the manufacture of knitted fabrics. From the time of my landing I worked at the knitting business for various parties, and in the summer of 1869 I went to work for Thomas Dolan. I know it was the summer, because I remember the weather was very hot, and I fix the date as 1869 by the fact that I was informed that Thomas Langham had charge of the room in which were the double-rib machines and had just taken the place of George Mousley, who left just before I came there. I also fix the date by the fact that I went into Dolan's employ three or four days after the burning of the mill in Marshall street, near Girard avenue, Philadelphia, in which mill I worked a warp
58 machine when the fire took place and burned it down and in which I lost all my tools. That fire took place in ——, 1869, as I distinctly remember.

I was with Thomas Dolan for about three years, and left when girls were employed to run the looms and the men were discharged. During all this time I ran a warp machine, and worked in the room where all the warp machines used in his factory were set, they being all in one room.

I have carefully examined the sample marked "Exhibit Dolan

No. 3," in the large sample book marked "Samples to 1869," and understand the construction of that piece of fabric. During the whole time of my employment by Thomas Dolan I never manufactured myself, nor did I ever see or see manufactured, any fabric of the construction of that sample, "Exhibit Dolan No. 3." I do not believe that a fabric of that character, "Exhibit Dolan No. 3," could have been made on the warp machines at Dolan's factory while I was there without my knowing it, as our looms were set near together, as each of us could see what another workman was making. That fabric, "Exhibit Dolan No. 3," must have been made on a warp machine or on a double-rib machine.

WILLIAM RADFORD.

Subscribed and sworn to before me this 1st day of December, 1881.

WILLY G. E. SCHULTZ,
[SEAL.] *Notary Public, Kings County, N. Y.*

Certificate filed N. Y. Co.

59 "COMPLAINANTS' EXHIBIT STRINGER AFFIDAVIT." S. R. B., U. S. Comm'r. March 27. 1884.

United States Circuit Court, Southern District of New York. In Equity.

JENNINGS
*v.*
DOLAN.

JENNINGS
*v.*
KIBBE.

A. G. JENNINGS *et al.*
*vs.*
THOMAS DOLAN. } No. 2.

SOUTHERN DISTRICT OF NEW YORK, }
*City and County of New York,* } *ss:*

THOMAS STRINGER, being duly sworn, deposes and says:

I am 22 years of age; reside in the city of Brooklyn, New York, and am by occupation a book-keeper.

I have carefully examined, at the office of Mr. John R. Bennet, No. 237 Broadway, New York, the sample of knitted fabric contained in the large sample book marked "Samples to 1869," which sample was marked "Exhibit Dolan No. 3," and during such examination I inspected minutely the manner in which that "Exhibit Dolan No. 3" was fastened into the sample book and the appearance of the gum or mucilage by which it was fastened and which appeared upon the portion of the page covered by "Exhibit Dolan No. 3."

The appearance and size of these gum or mucilage marks, in connection with the appearance and size of the fabric "Exhibit Dolan No. 3," on my inspection of them led me immediately to think that this sample, "Exhibit Dolan No. 3," occupied a space which
60 had previously been occupied by some other sample, and, acting on this idea, I thereupon minutely examined the surface of the gum covering the space under that sample, "Exhibit Dolan No. 3," in the sample book, and clearly saw embedded and sticking in this gum a number of small, red-colored fibres or hairs, which led me to believe that some fabrics containing red-colored hairs or fibres had been formerly attached to the spot now covered by "Exhibit Dolan No. 3" by gum or mucilage and had thereafter been removed, leaving the small portions of the fabric to which I have referred fastened in the hardened mucilage or gum. The fabric "Exhibit Dolan No. 3" is all white, and from my observations above stated I concluded that "Exhibit Dolan No. 3" has been placed in the space it now occupies subsequently to the putting in that same place of some other fabric having red threads.

The examination to which I have above referred was made on November 22, 1881, and Mr. Samuel R. Betts was present at the time and showed me which sample to examine, and I then called his attention to the red fibres or threads of which I have spoken, and he also examined it.

(S'g'd) THOMAS STRINGER.

Subscribed and sworn to before me this 2d day of December, 1881

(S'g'd) WILLY G. E. SCHULTZ,
[SEAL.] *Notary Public, Kings County, N. Y.*

Certificate filed N. Y. Co.

(Endorsed:) Filed Feb. 21, 1882.

UNITED STATES OF AMERICA, }
*Southern District of New York,* } *ss:*

I hereby certify that the foregoing printed matter contained on pages 15 and 16 and from folios 43 to 47 is a true and correct copy of an affidavit of Thomas Stringer in the suit of Jennings *et al. vs.* Dolan, on file in my office.

TIMOTHY GRIFFITH, *Clerk.*

61 COMPLAINANTS' EXHIBIT JACKSON AFFIDAVIT. S. R. B., U. S. Comm'r. Jan. 23, 1884.

United States Circuit Court, Southern District of New York. In Equity.

JENNINGS
*v.*
DOLAN.

JENNINGS
*v.*
KIBBE *et al.*

ABRAHAM G. JENNINGS *et al.*
*v.*
THOMAS DOLAN.

STATE OF PENNSYLVANIA,
*City and County of Philadelphia,* } *ss:*

CORNELIUS JACKSON, being duly sworn, deposes and says he is 39 years old; resides in the city of Philadelphia, and is employed by Thomas Dolan & Co. as foreman and designer of the knit goods department; that he has been in the employ of said Dolan continuously for the past 12 years, excepting the year 1875, when he worked for Conyers Button & Co.; for the first years he operated an English rotary warp loom, and during the latter years acted as assistant foreman and foreman and designer of the knitted goods department; that when he first entered the employ of said Dolan, Henry Boot, now deceased, was designer and foreman of the room in which the rotary warp looms were located, and remained foreman until the year 1875, during all of which time deponent was in said Boot's department; that the double-ribbed ma-
62 chines were located in a room separate and distinct from the warp looms, forming a department by themselves; that he has carefully examined fabric "Exhibit Dolan No. 3," in book marked "Samples to 1869, Thomas Dolan," and identifies the same as being a piece of fabric manufactured at the factory of said Dolan upon an English rotary warp loom in the said Boot's department prior to the year 1872; that during the year 1869, and shortly after deponent entered the employ of said Dolan, said Boot put the pattern of the fabric "Exhibit Dolan No. 3" upon warp loom numbered three hundred and fifteen (315), and set me to work knitting such fabric, which deponent continued doing for a considerable period of time, manufacturing large quantities in all of fabric of precisely the same construction as the fabric "Exhibit Dolan No. 3," and all of which fabric was manufactured upon an English rotary warp loom; that he believes fabric "Exhibit Dolan No. 3" to be a piece of the original fabric manufactured at the factory of said Dolan as early as the year 1869; that prior to deponent's manu-

facturing fabric such as "Exhibit Dolan No. 3" he saw the said Boot manufacture the same fabric upon another loom in the same room, and was informed at that time that said fabric had been made prior to deponent's entering said Dolan's employ; that of his own knowledge he does not know who designed said fabric, but was informed by the said Boot that it was original with him; that he also manufactured about that same time and under said Boot's direction knit fabrics of substantially the same construction, the only difference being the use of a single pillar instead of the double pillar; that in a former affidavit made by him in case of Jennings *et al. vs.* Kibbe *et al.*, sworn to April 1, 1881, he gave full particulars as to the several fabrics designed by said Boot and manufactured by said Boot shortly after deponent entered the employ of said Dolan, and referred to the sample of such fabric found in the several large sample books; that on October 21, 1881, he gave another affidavit in the same cause, referring especially to fabric "Exhibit Dolan No. 3," in which he stated as follows:

"I have carefully examined the sample of fabric marked 'Exhibit Dolan No. 3,' in book marked 'Samples to 1869, Thomas
63 Dolan,' and, as stated in my former affidavit, such fabric was manufactured by me at the factory of Thomas Dolan prior to 1872 and in considerable quantities, and which fabric was, as I was informed at that time, sold by Dolan to his trade throughout the country. I believe sample marked 'Exhibit Dolan No. 3,' in book marked 'Samples to 1869, Thos. Dolan,' to be a piece of the original fabric manufactured by me prior to 1872."

That he has known of fabric "Exhibit Dolan No. 3" being contained in book marked "Samples to 1869, Thomas Dolan," since the year 1874; that the year before he entered the employ of the said Button he became assistant foreman and designer of the knit goods department, and that after his return to said Dolan's employ, in the beginning of the year 1876, he became foreman, designer of the knit goods department; that after he became assistant foreman and designer of the knit goods department he had occasion to repeatedly refer to and examine the samples contained in book marked "Samples to 1869, Thomas Dolan," and in the course of such examinations repeatedly saw and examined the fabric "Exhibit Dolan No. 3;" that after his return to said Dolan's employ, beginning with the year 1876, being foreman of the knit goods department, he again repeatedly referred to and examined the samples contained in book marked "Samples to 1869, Thomas Dolan," and has done so many times during each and every year up to the present time, sometimes referring to the book several times during a single day; that during each of the years from the beginning of 1876 he has looked over every sample contained in that book, and has been very familiar with the sample "Exhibit Dolan No. 3;" that the fabric "Exhibit Dolan No. 3" now occupies precisely the same position in said sample book as it did in 1875, and that said sample has occupied the same position ever since that year, which was the first he knew of its being contained in said sample book; that prior to the year 1875 he operated a warp loom under directions received

from others, and had no occasion whatever to refer to the samples contained in book marked "Samples to 1869, Thomas Dolan;" that his reason for referring to the samples contained in said sample book and examine the same from and after the year 1874,
64 when he was assistant designer and subsequently designer, was as a book of reference in getting up new designs for knitted fabrics.

CORNELIUS JACKSON.

Subscribed and sworn to before me this 15th day of December, 1881.

R. S. CHILD, JR.,
*Notary Public.*

[SEAL.]

(Endorsed:) Filed Feb. 21, 1882.

UNITED STATES OF AMERICA,
*Southern District of New York,* } ss:

I, Timothy Griffith, clerk of the circuit court of the United States for the southern district of New York, do hereby certify that the foregoing printed pages, from pages 19 to 22, inclusive, contain a true and correct copy of an affidavit of Cornelius Jackson, in a suit entitled "A. G. Jennings and *al. vs.* Thomas Dolan," now on file and remaining of record in my office.

In witness whereof I have subscribed my name and caused
[SEAL] the seal of said court to be hereunto affixed this twenty-first day of January, A. D. 1884.

TIMOTHY GRIFFITH, *Clerk.*

65 COMPLAINANTS' EXHIBIT HODGKINS DECREE. S. R. B., U. S. Commis. March 27, 1884.

Circuit Court of the United States, District of Mass. May Term, 1880. In Equity.

JENNINGS
*v.*
DOLAN.

JENNINGS
*v.*
KIBBE.

ABRAHAM G. JENNINGS *et al.*, Complainants,
—
JOHN E. HODGKINS *et al.*, Defendants.

*Decree for Perpetual Injunction and for Reference to a Master.*

This cause came on to be heard at this present term upon the pleadings and proofs, and was argued by counsel for the complainants.

And now, upon consideration thereof, to wit, September 4, it is

ordered, adjudged, and decreed as follows, viz: That the two letters patent referred to in the complainants' bill, being letters patent of the United States respectively granted unto Abraham G. Jennings for a new and original design for lace purling, No. 10388, dated January 12, 1878, and to Warren P. Jennings for a new and original design for fringed lace fabric, No. 10448, dated February 12, 1878, are good and valid patents, and that the said Abraham G. Jennings and Warren P. Jennings respectively were the original and first inventors of the designs described and claimed therein, and that the said defendants have infringed the said patents and upon the exclusive rights of the complainants under the same.

And it is further ordered, adjudged, and decreed that the complainants recover of the defendants the profits which they have received or made or which have accrued to them from said infringement by the manufacture, use, or sale of the improvements described and secured by said letters patent at any and all times since the dates of said letters patent respectively, and in addition thereto the damages which the complainants have sustained thereby.

66 And it is further ordered, adjudged, and decreed that it be referred to Charles H. Swan, Esq., a master of this court, *pro hac vice*, to take and report to the court an account of the profits which the said defendants have received or which have arisen or accrued to them from the infringement of the patented inventions by unlawfully making, using, or vending the same as alleged in the bill, and to ascertain and report the damages, if any, in addition to the profits, which the complainants have sustained thereby since the dates of said letters patent respectively.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued against the defendants according to the prayer of the bill.

And it is further ordered, adjudged, and decreed that the complainants recover of the defendants their costs of suit.

By the court:

[SEAL.] JOHN G. STETSON, *Clerk.*

A true copy.

Attest: ALEX'R H. TROWBRIDGE,
*Deputy Clerk.*

67 COMPLAINANTS' EXHIBIT SAYRE AND NORTH STIPULATION.
S. R. B., U. S. Comm'r. March 27, 1884.

United States Circuit Court, Southern District of New York.

JENNINGS
*v.*
DOLAN.

JENNINGS
*v.*
KIBBER.

A. G. JENNINGS and W. P. JENNINGS
*vs.*
JAMES H. SAYRE, JOSEPH W. NORTH, and JAMES E. HEDGES. } In Equity.

We, James H. Sayre and Joseph W. North, defendants in the above-entitled cause, hereby acknowledge the validity of the patents set up in the bill of complaint, and promise to respect the same in future and the rights of the complainants thereunder; and we furthermore promise and agree that from and after the date hereof we will not deal in any goods covered by said patents or either of them, except for the complainants or their licensees.

(Signed) JAMES H. SAYRE.
JOSEPH W. NORTH.

New York, November 24, 1879.

(Endorsed:) U. S. circuit court, southern district of New York. A. G. Jennings *et al. vs.* Jas. H. Sayre *et al.* In equity.
68 Consent of defendants acknowledging validity of complainants' patents. Copy. Filed 24th November, 1879.

A copy of the original stipulation on file.
New York, March 26, 1884.
[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

U. S. Circuit Court, Southern District of New York.

A. G. JENNINGS *et al.*
*vs.*
HENRY R. KIBBE *et al.* } In Equity. No. 2. Docket No. 2216.

A. G. JENNINGS *et al.*
*vs.*
THOMAS DOLAN. } In Equity. No. 2. Docket No. 2196.

Testimony for final hearing, taken on the part of the complainants, in rebuttal, in the above-entitled cases, under and pursuant to the sixty-seventh rule of the Supreme Court for courts of equity, as amended, before George F. Betts, Esq., examiner of this court.

69 MAY 21, 1883—11 a. m.

Met pursuant to notice hereunto attached.

Present: A. v. Briesen, Esq., of counsel for complainants, and John R. Bennett, Esq., of counsel for defendants.

It is consented by counsel for the respective parties hereto that the witnesses may be sworn by Samuel R. Betts, Esq., United States commissioner.

Dr. T. O'Conor Sloane, being called as a witness on the part of the complainants and duly sworn, deposes and says:

Q. 1. Please state your name, age, residence, and occupation.

A. T. O'Conor Sloane. I am 31 years of age. I reside at Sand's Point, Queens county, Long Island. My place of business is at 119 Pearl street, New York city. I am by occupation a chemist, physicist, and engineer. For many months past I have given much attention to patents and patented structures, and have given testimony in a number of suits where patented structures were the subject of controversy.

Q. 2. Have you examined in the book marked "Samples to 1869, Thomas Dolan," the pieces of fabric marked "Exhibits 28, 30," and "Dolan No. 3?"

A. I have done so.

Q. 3. Have you read the evidence given in behalf of the defendants in these suits?

Adjourned until Wednesday, May 23d, at 12 o'clock.

Wednesday, *May* 23*d*—12 m.

Met pursuant to adjournment.

Present: Counsel as before.

Adjourned until new notice.

70 New York, *October* 12, 1883—10 a. m.

Met pursuant to notice.

Present: A. v. Briesen, Esq., of counsel for complainants; John R. Bennett, Esq., of counsel for defendants.

It is consented that the testimony for complainants in this suit may be taken before Samuel R. Betts, Esq., United States commissioner.

Henry A. Truitt, a witness called by complainants, and being first duly cautioned and sworn, testifies as follows in answer to questions by A. v. Briesen, Esq.:

Counsel for complainants states that he shall now proceed with the further cross-examination of the defendants—witness Truitt:

My name is Henry A. Truitt; my age is 38; I reside at No. 2000 North Twelfth street; my occupation is manufacturer of knit goods; my factory is at No. 1720 North Second street. I do not make nubias there now; I can make them if I want to. I started at that business in January of this year, 1883. No one is interested in that business with me.

Q. 1. Will you please look at the paper now shown you, entitled

in this court Abraham G. Jennings and others ag'st Henry R. Kibbe and others, which purports to be an affidavit of Henry A. Truitt, subscribed and sworn to before Henry C. Crossman, notary public, on the 1st day of April, 1881, and which was filed in this court on the 5th day of April, 1881, and state whether that is your affidavit?

A. I take it to be.

Q. 2. You take it to be your affidavit? Do you mean that it is your affidavit?

A. Well, I should say yes, errors and omissions excepted. I see that is my signature.

71 Counsel for the complainants offers said affidavit in evidence, and the same is marked "Complainants' Exhibit Truitt First Affidavit, S. R. B., U. S. Comm'r, Oct. 12, 1883."

Q. 3. Will you please look at the paper now shown you, entitled in this court A. G. Jennings and others ag'st Henry R. Kibbe and others, which purports to be an affidavit of Henry A. Truitt, subscribed and sworn to before Nathan Manasse, notary public, on the 21st day of October, 1881, and which was filed in this court on the 22d of October, 1881, and state whether that is your affidavit?

A. I make the same reply as to the other. The affidavit is mine, errors and omissions excepted. I recognize my signature at the end.

Counsel for complainants offers said affidavit in evidence, and the same is marked "Complainants' Exhibit Truitt Second Affidavit, S. R. B., U. S. Comm'r, Oct. 12, 1883."

Q. 4. Will you please look at the paper now shown you, entitled in this court Abraham G. Jennings *et al.* ag'st Thomas Dolan, which purports to be an affidavit of Henry A. Truitt, subscribed and sworn to before R. S. Child, Jr., on the 14th day of December, 1881, and which was filed in this court on the 21st day of February, 1882, and state whether that is your affidavit?

A. It looks like my signature, and I suppose it is my affidavit, errors and omissions excepted.

Counsel for complainants offers said affidavit in evidence, and the same is marked "Complainants' Exhibit Truitt Third Affidavit, S. R. B., U. S. Comm'r, Oct. 12, 1883."

Q. 5. Will you please look at the paper now shown you, entitled in this court Abraham G. Jennings *et al.* ag'st Thomas Dolan, which purports to be an affidavit of Henry A. Truitt, subscribed and sworn to before R. S. Child, Jr., on the 15th of December, 1881, and which was filed in this court on the 21st day of February, 1882, and state whether that is your affidavit?

72 A. That also looks like my signature, errors and omissions excepted. That is my affidavit, I suppose.

Counsel for complainants offers said affidavit in evidence, and the same is marked "Complainants' Exhibit Truitt Fourth Affidavit, S. R. B., U. S. Comm'r, Oct. 12, 1883."

Q. 6. At the time you made these four affidavits in whose employ were you?

A. One or two were made while I was in the employ of Thomas Dolan. All were made while I was in his employ. I was in the employ of Thomas Dolan & Co. until Dec. 31st, 1882, and I started for myself on Jan. 1, 1883.

Q. 7. Please examine your four affidavits with care and say whether the statements therein contained are true. If you find any misstatements or errors therein be pleased to call our attention to the same.

The Exhibits Truitt First, Second, Third, and Fourth Affidavits are now handed to the witness for examination.

A. In "Ex. Third Affidavit" is a mistake in age. I was 36 instead of 35, as printed. Page 2, same affidavit, should be "1870 to 1872," in third line; also on same page, in 9th line, should be 1872 instead of 1870. Page 5, same affidavit, line 23, the words "and some others" should be inserted after the words "Exhibit Dolan No. 3." In line 25, same page, it should read, after the word "patterns," "some were afterwards placed back by me; others were lost." Page 7, third line, the words "in any sense a fringe" should read "in any sense a separate fringe." In "Exhibit Truitt First Affidavit," page 7, line 17, "1870" should be "1872." I have made all the corrections that I have observed. I find those affidavits to be true, to the best of my knowledge, as corrected.

Q. 8. In "Ex. First Affidavit" you speak of a descriptive book, which is in your own handwriting. I read you from the affidavit. (Counsel reads.) When last did you see that book?

A. I saw that book just a short time previous to making that affidavit.

Q. 9. What became of it?

73 A. I judge it is in possession of Thomas Dolan & Co.

Q. 10. Did it really contain a description of the fabric marked "Ex. Dolan No. 3," in book marked "Samples to 1869, Thomas Dolan," as stated in your said affidavit?

A. It contained the description necessary for us to know what fabric it was as distinguished from other fabrics, as explained in other parts of the affidavit.

Q. 11. You read that description, did you not, before you made that affidavit?

A. I did.

Q. 12. Is that descriptive book the same as the cost book?

A. Yes; it is used for a cost book.

Counsel for complainants calls for the said book.

Q. 13. Does that book show when the sample was made?

A. It would not show when the sample was made, but it would show about the time when goods were manufactured of that character.

Q. 14. At the time you examined that descriptive book, before making the affidavit, did you or not find in that book entries which

satisfied you that what you say in the affidavit about "Exhibit Dolan No. 3" is true?

A. As to the fact of us manufacturing that fabric I did; also as to about the time. The entry indicated to our minds as manufacturers that the fabric was the fabric "Ex. Dolan No. 3," and it might be with the single or double pillar, either one; that would not always be stated. There would be a reference to that character of fabric in the book.

Q. 15. Can you inform us how the book does describe this fabric?

A. It refers to it as a lace or seaweed fabric.

Q. 16. I will now read you your answer to question 244, as printed on page 31 of Defendants' Printed Record; also your answers to questions 245 and 246 on the next following page, and I ask you to state whether that testimony is as true as your affidavits are true.

(Counsel reads.)

74 A. There is an error there. This affidavit just read (pointing to the testimony) related as to the quantities of this material made, and that was the way I understood it.

Q. 17. I now desire you to inform us whether, in the place now occupied by Exhibit Dolan No. 3, in book marked "Samples to 1869, Thomas Dolan," any other sample was ever secured to the paper by gum.

A. Not to my knowledge.

Q. 18. That answer will never satisfy me. Do you swear that another sample did not occupy the place now occupied by Exhibit Dolan No. 3?

(Objected to, as the question has been already answered not to his knowledge.)

A. My answer is that I have knowledge that I am under oath, and I have answered the question.

Q. 19. If there had been another sample in this book in the place now occupied by Exhibit Dolan No. 3, would you not know it?

A. I believe I would.

Q. 20. You don't know of any sample of red color that occupied the place now occupied by Exhibit Dolan No. 3?

A. I do not.

Q. 21. When last was that Exhibit Dolan No. 3 gummed into that book?

A. At the time stated in the affidavit which I have made previous to this.

Q. 22. When first did you personally gum it into that book?

A. In the year 1869 or 1870.

Q. 23. How often have you gummed that exhibit into that book?

A. I think twice, to the best of my recollection.

Q. 24. When you first put that sample in the book did you cut it from the original fabric or take it from another book?

A. I am not sure as to whether I took it from the book or a piece of paper, or it may have been taken from the original fabric and placed directly in the book, as we had, previous to these books being

purchased, our samples kept on pieces of paper of irregular size. Some samples were also loose, with tags fastened to them.

Adjourned to Tuesday, October 16, 11 a. m.

75 TUESDAY, *October* 16—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Defendants' counsel stated that personally he was not in attendance at the last session when Mr. Truitt was called as a witness, but was represented by his clerk, and now objects to the statement of complainants' counsel that he shall now proceed with the further cross-examination of defendants' witness, Truit, as his cross-examination was concluded and no rights reserved, and that the witness was in attendance in reply to a summons from complainants' counsel and as a witness on behalf of complainants.

(By Mr. BRIESEN:)

Q. 25. Did you converse with Mr. Bennett since last you gave testimony in this suit regarding your testimony?

A. I have; relating to the examination.

Q. 26. Did you receive any instructions from him respecting your examination?

A. None.

Examination closed.

HENRY A. TRUITT.

Sworn to before me this 16th day of October, 1883.

SAMUEL R. BETTS,
*United States Commissioner, Southern District of New York.*

Counsel for complainants asks whether counsel for defendants will produce the descriptive book which the witness, Truitt, has sworn is now in the possession of Thomas Dolan & Co., and for which counsel for complainants called at the last session.

Defendants' counsel states that he has the descriptive or cost book of Thomas Dolan referred to by the witness, which book shows the cost of the various articles manufactured by
76 Thomas Dolan and the material composing or entering into such articles, but declines to produce it for inspection of complainants' counsel, as it is the private cost book of Thomas Dolan, and to do so would be disclosing the secrets of his business, but will permit complainants' counsel to inspect such facts thereof as relate exclusively to the matters in controversy and are referred to by the witness in his several affidavits and examination, all of which have been marked by the witness Truitt at request of counsel for defendant, and, further, that the witness will, if desired, point out and explain the same.

Counsel for complainant does not admit the allegations of fact contained in the foregoing statement, but is willing that Mr. Truitt

shall read into this record all the entries contained in said descriptive book to which he intended to refer in his affidavit, and recalls Mr. Truitt for that purpose.

Mr. TRUITT recalled:

Q. 27. Will you please read into this record all the entries contained in the descriptive book now before you to which you referred or intended to refer in your affidavits heretofore identified by you?

The book now before the witness is marked on the cover, in gold letters, as follows:

"Thomas Dolan.
Private.
1866."

A. I will, and they are as follows.

Recess until 2.30 p. m.

After recess.
Present: Counsel as before.

(Witness continues:) In the year 1866, under the head of "Hoods," I find the following:

| | | |
|---|---|---|
| 1153—child's, "seaweed," $\frac{2}{34}$ white; see May 31; Book, Higgets 1 & 1, white | | |
| 77 lining, No. 17, waste 3, Shetland ruche (edge) all round, No. cut 1st size, 6 col. ribbon bow, ruche tassel; wt., 26, @ 2.00 | 4 | 75 |
| W. W. W., 25; lining, 20; C. & T., 5; ruche, 25; $\frac{2}{3}$ ribbon, 1.00 | 1 | 75 |
| Making, 50; boxes, &c., 38 | | 88 |
| 12, 12, 7½ W. | 7 | 38 |
| Hand-made | 12 | |
| 1100—Misses' $\frac{2}{30}$ white pearl, No. 17 fine, June 4; edge spot ruche all round and used; waste, 3 oz., for rosette on side, with seaweed trim.; 1–10 rosette, wing bobs; see book row, C. & T. | | |
| 4 yd. tassels; wt., 34, @ 1.92 | 6 | 24 |
| W. W. W'd, 30; C. & T., 8; 20 yds. ruche, 25; 18 yds. border, 10 | | 73 |
| Making, 70; boxes, 44 | 1 | 14 |
| 13¾, 12½, 8½ W. | 8 | 11 |
| | 13 | 50 |

1202.
June 22.
Waste, 4 oz.

Twilight—White, single rib, as 1166; col. seaweed trimming & tassel; see book; wt., $2^9$, @ 2.50 ..... 7 42
Expenses as 1173, 3.40; 2%, 22 ..... 3 62

19, 15½, 4½ ..... 11 02

21

1208.
June 23,
Waste, 3 oz.
23 in. on ea. ru.

Misses' $\frac{2}{2\,6}$ white afghan; see book; No. 17, fine edge, spot ruche on face; No. 2, col. edge border, double on cape, single across neck; full col. seaweed; rosette on top in rear of ruche ..... 3 00
Wt., $2^8$, @ 2.00 ..... 71
W. W. W., 35; yds. ruche, 15; 5 yds. border, 15 ..... 11
12 yds. seaweed, 6; making, 75 ..... 1 31

Cord & tassel, 8; boxes, &c., 48; 2%, 11 ..... 5 13

H. M. ..... 40

1242.
July 7.
Waste, 8; fine, 12.

78 Grecian finish, white seaweed, col'd pearl lining, white frosted all round and cross cape; No. 6, white ribbon ties; wt., $3^5$, @ fine, 1.12; coarse, $1^9$ ..... 7 13
W. W. W., 25; surging, 25; frosted, 30; making ribbon, 1.50 ..... 2 30
24
Making, 1.00; boxes, 48; 2 % ..... 1 48

16½, 12½, 6 ..... 11 15

20

1258.
July 12.
Waste, ⅛.

Grecian twist, col'd mixed, seaweed, as 1969; Higgets, 1 & 1 white lining, white frosted full all round and across neck, double in front, No. 6, white ribbon ties; wt., $2^{14}$, @ 2.50 ..... 7 20
22
Expenses as —; 2 % ..... 3 78

11 20

20

"May Queen," $\frac{2}{3}\frac{2}{0}$ col'd pearl, covered with fine white "seaweed," as 1153, No. 13, fine white rose ruche, cold-frosted loops touched with silk border between five roses in front, col. edge border run between and around remainder of roses, narrow dad border strings with col. frosted frilled outside, small col. tassel on ends.

2454.
Sept. 21.
Waste, 8 oz.

| | |
|---|---|
| Wt., 2.13, @ 2.25 | 6 33 |
| W. W. W., 20; seaweed, 20; hood border and tassel, 20 | 60 |
| Frosted, 15; silk border, 20; ruche, 15; No. 2 border, 15 | 65 |
| | 19 |
| Making, 1.25; boxes, &c., 55; 2 % | 1 80 |
| $17\frac{1}{2}$, $11\frac{1}{2}$, $7\frac{1}{2}$; W. H. M. | 9 57 |
| | 16 |

79 May Queen, white seaweed, as 1153; Higgets, 1 & 1, white lining; one row each of col'd and white frosted filled all round, dia. border strings, col. frosted on.

2464.
Oct. 3.
Waste, 8 oz; col. frosted rosette on sides and points.

| | |
|---|---|
| Wt., 2.12, @ 2.50 | 6 88 |
| W. W. W., 40; frosted, 75; border, 15 | 1 30 |
| | 20 |
| Making, 1.25; boxes, &c., 50; 2 % | 1 75 |
| | 10 13 |
| | 16 50 |

Under head of "Nubias" I find the following entry made in 1866:

3d-size white seaweed; see sample; 53 meshes wide; 102 wide frame; white Gothic tassel cover, $\frac{2}{3}\frac{2}{4}$ worsted.

1730.
Dec. 15.
Waste, 4 oz.

| | |
|---|---|
| Wt., 3.10, @ 2.50 | 9 07 |
| | 23 |
| Expenses as 1723; 2 % | 2 38 |
| | 11 68 |
| | 18 18 |
| | 13 50 |

In the year 1866, under head of "Caps," I find the following entry:

1562.
June 26.
Waste, 6 oz.

2nd size, white seaweed, as 1153, trimmed same as 1559.

| | |
|---|---|
| Wt., 2.12, @ 2.36 | 6 49 |
| | 20 |
| W. W. W., 25; other expenses as 1559, 3.09; 2 % | 3 34 |
| 14, 14, 6 | 10 03 |
| | 18 |

1563.
June 27.
Waste, 6 oz.

2nd size, mixed seaweed, as 1969, summer webb lining in crown, Higgets on ruche, No. 27, col. edge fine ribb ruche, and used for feather, twisted across front with duff and small white tassels at left end, No. 6, white ribbon bow.

80

| | |
|---|---|
| Wt., $2^6$, @ 2.60 | 6 16 |
| W. W. W., 25; lining, 35; 15⅓ yds. ruche, 25c., & T. & T., 20; 19⅔ ribbon, $1.00 | 2 05 |
| Making, 80; boxes, 44; 2 % | 1 24 |
| 14, 14, 6 | 9 64 |
| | 18 00 |

Under head of "Cloaks" I find the following entries made in 1866:

1925.
June 4.
Waste lin., 11; S. W., 11; 12 yds. of sea foam on each.

White "seaweed," as 1154; 2d size, equal to 2d; full on acc't of the elasticity of fabric; Higgets 1 & 1 white lining; no lining in hood; white sea-foam around entire circular and hood; No. 3 white-ribbon neck on each binding and tie.

| | |
|---|---|
| Wt., $1^{12}$ gross; fine, $6^4$; coarse, $4^8$ | 23 51 |
| W. W. W., 2.00; lining, 1.00; 144 yds. sea-foam, 1.00 | 4 00 |
| Making, 2.00; 1 piece ribbon, 60; boxes, &c., 1.45 | 4 05 |
| 1, $1^8$, &c., out of roll | 31 56 |
| $23\frac{1}{2}$, 19, 6 | 66 |

Cloaks (continued):

2d size.—Langham's white leaf. See book. 6-thread white gothic border, as 1926, on skirt with seaweed fringe; sea-foam as 1709 looped on top of border and form sham hood; seaweed in front of circular on edge of border; No. 3 white ribbon on neck.

1963.
June 22.
Waste, 12 oz.; cut 1st size; 2-32 in. on ea.; 18 yds. from frost.; 5⅛ yds. fringe.

| | | |
|---|---|---|
| Wt., $7^{10}$, @ 2.00 | | 15 25 |
| W. W. W., 1.00; 84 yds. seaweed, 42; 54 yds. sea-foam, 27 | | 1 69 |
| 34⅔ yds. border, 70; 1 piece ribbon, 60; making, 2.00 | | 3 30 |
| | | 45 |
| Boxes, &c., 1.30; fringing, 96; 2%, 45 | | 2 26 |
| 22, 16½, 5 | | 22 95 |
| | | 44 |

81 1st size.—Seaweed as 1153 with hood; summer webb lining as 1458; no lining in hood; sea-foam tucked all around skirt and on hood; No. 3 white ribbon on neck.

1967.
June 26.
Waste, 1s.

| | | |
|---|---|---|
| Wt., $5^{10}$, @ 2.50 | | 14 08 |
| W. W. W., 1.00; seaweed lining, 1.50; 100 sea-foam, 50 | | 3 00 |
| | | 42 |
| 1 piece ribbon, 60; making, 2.00; boxes, &c., 1.00; 2%, 42 | | 3 60 |
| 19, 15½, 7⅛, 1 doz. | | 21 10 |
| | | 40 |

3d size.—White seaweed with hood; white summer webb lining; none in hood; white sea-foam all around skirt and hood; No. 3 white ribbon on neck.

1968.
June 26.
Waste, 2s; cut 2nd size.

| | | |
|---|---|---|
| Wt., $8^{2}$, @ 2.50 | | 20 32 |
| W. W. W., 2.00; lining, 2.00; 144 yds. sea-foam, 75 | | 4 75 |
| | | 58 |
| 1 piece ribbon, 60; making, 2.00; boxes, &c., 1.30; 2%, 58 | | 3 90 |
| 22, 18½, 4 (1½ doz.) | | 29 55 |
| | | 60 |

1969.
June 26.
Waste, 2₂; cut 2nd size. See book for border and webb.

3d size. — Mixed seaweed with hood; trimmed with mixed sea-foam and col. ribbon.

| | | |
|---|---|---|
| Wt., $8^2$, @ 272 | 22 10 | |
| | | 62 |
| Expenses as 1968; 20%, 62 | 8 65 | |
| 22, 18½, 4 | 31 37 | |
| | | 60 |

1973.
July 10.
Waste, 2₂.

3d size.—Mixed seaweed as 1969; white sea-foam border all around and on hood; no lining on hood; skirt lined with fine white summer webb; No. 3 col. ribbon on neck.

| | | |
|---|---|---|
| 82 Wt., $7^{12}$, @ 2.72 | 21 08 | |
| | | 60 |
| Expenses as 1,968; 2 % | 8 65 | |
| 22, 18½, 4 | 30 33 | |
| | | 60 |

1980.
Oct. 2.
Waste, 2 lbs.

2d size.—White seaweed as 1153; $\frac{2}{10}$ col'd pearl lining; seaweed hood; no lining; col. edge sea-foam as 1969; tucked all round; cloak and hood; No. 4 col'd ribbon tie.

| | | |
|---|---|---|
| Wt., $7^4$, @ 2.25 | 16 32 | |
| W. W. W., seaweed, 1.56; pearl, 1.01; 1 ribbon, .86 | 3 36 | |
| 144 yds. border, .75; making, 1.75; boxes, &c., .75 | 3 25 | |
| 22 x 16½ x 7; 1 doz. pze.; 2 % | 46 | |
| H. M. | 23 39 | |
| | | 44 |

These are all the entries I find in this book, and this is the book to which I referred in my affidavits.

Q. 28. Are all the above entries found in the year 1866?

A. They are.

Q. 29. Were they all entered in the descriptive book in your own handwriting?

A. They were.

Cross-examined by Mr. JOHN R. BENNETT:

Cross-Q. 30. You have referred to this book in some cases as the

descriptive book and in others as the cost book. Explain in what sense, if any, it is descriptive.

(Objected to as incompetent, the book not having been produced for the inspection of complainants' counsel nor for the inspection of the court.)

A. It is descriptive only in so far as it tells of the different fabrics of which the articles mentioned in it may be composed, and not a descriptive book of fabrics as to their construction or yarns or material of which they are made.

83 Cross-Q. 31. Then it is descriptive of the different articles made, but not descriptive of the fabrics entering into such articles—that is as to the construction and materials of which such fabrics were made?

(Same objection.)

A. It is not, and has always been known to us and recognized as the private cost book. I would correct my reply and say that it simply tells of the kind of fabrics composing the articles made.

Cross-Q. 32. Is the book which you have produced the private book of Thomas Dolan for the year 1866, showing the actual cost of the various articles manufactured by him?

(Same objection and as the witness has not produced any book.)

A. It is and it does.

By Mr. BRIESEN:

Q. 33. Which book did you understand it to be that you referred to in the last question?

A. The book lying on the table before us and marked "Thomas Dolan, private, 1866."

Q. 34. Did you produce that book?

A. I told Thomas Dolan that Mr. Briesen called for it, and he gave it to me. I brought it to Mr. Bennett at his request.

Q. 35. Have you any objection to that book being marked in evidence?

Defendant's counsel states that the book is not in possession of the witness, and that he will not permit it to be marked in evidence for the same reasons that he refused to permit it to be examined by complainants' counsel.

A. Personally I have not, but it is not my property, and I have nothing whatever to do with it.

Q. 36. Did you keep a book like this in 1867 for Mr. Dolan?

A. To the best of my recollection, I did.

84 Q. 37. Also in 1868 and subsequent years?

A. I did.

Q. 38. Does this book show when you first shipped from the factory articles made of the fabrics of which you have testified?

A. No. It simply shows when we costed up those articles or esti-

mated their cost or value preparatory to the selling price being made for them.

(All after "no" objected to as not responsive.)

Q. 39. Do you know of any books of Thomas Dolan & Co. or Thomas Dolan which would show when first they commenced shipping from the factory articles made of fabrics such as you have referred to in your testimony?

A. Personally I do not, as I had nothing to do with the book-keeping of the establishment. I simply say that I suppose they had books which show shipments of all they made. I was aware of the fact that they kept shipping books—invoice books—but I did not have charge of them, therefore I am not very familiar with their contents.

Q. 40. Did you ever see in any book any entry showing when first they commenced shipping from the factory articles of fabrics such as you have referred to in your testimony?

A. Not to my recollection.

Examination closed.

HENRY A. TRUITT.

Sworn to before me this 16th day of October, 1883.

SAM'L R. BETTS,
*United States Comm'r, South. Dist. of New York.*

Adjourned to Wednesday, October 24, 1883.

WEDNESDAY, *October* 24, 1883—11 a. m.

Met pursuant to adjournment.

Adjourned to Monday, November 5, 1883, at 11 a. m.

85 MONDAY, *November* 5, 1883—11 a. m.

Met pursuant to adjournment.

Present: A. v. Briesen, Esq., of counsel for complainants, and John R. Bennett, Esq., of counsel for defendants.

JOHN MITCHELL, a witness called on the part of complainants, and being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, testifies as follows in answer to questions by counsel for complainants:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John Mitchell; my age is 63. I reside at No. 142 Washington avenue, Brooklyn. I am a warp hand, working on a warp machine and making knit fabrics.

Q. 2. Of what country are you a citizen?

A. I am a citizen of the United States. I was born in England and learned my trade there.

Q. 3. Do you know Thomas Dolan, the defendant in this suit?

A. Yes.

Q. 4. Have you ever worked for Mr. Dolan; and, if so, from what time to what time?

A. Yes. I worked for Mr. Dolan first in about 1860 for a few months and then left. I came back in about 1868 and continued working with him until he stopped, about two years ago.

Q. 5. What were your duties while you were employed by Mr. Dolan?

A. I was engaged to work a warp machine and continued working it up till he stopped making that class of goods.

Q. 6. What room did you work in?

A. What they call the warp-room.

Q. 7. About how many machines did they have in the warp-room from 1868 on?

A. Sixteen or seventeen.

Q. 8. Were you familiar with the different designs of fabrics or knit goods that were made on these various machines?

86 A. Yes.

Q. 9. If any new design of fabric was produced on any of those machines, do you think that you would have noticed it?

A. Yes.

Q. 10. Why?

A. If it is a good article it generally makes an impression upon us.

Q. 11. Were you acquainted with Mr. Henry A. Truitt while you were employed by Mr. Dolan?

A. Yes.

Q. 12. Do you remember Mr. Truitt's showing you a sample contained in one of Mr. Dolan's sample books and questioning you about it?

A. Yes.

Q. 13. About when was that?

A. Two or three years ago—when this suit was instituted.

Q. 14. What did he say to you then?

A. He asked me if I recollected Boot making that bit of stuff. I said, "No." Mr. Dolan said, "Well, then, John don't know anything about it."

Q. 15. What kind of a sample was that which Mr. Truitt showed you in the sample book?

A. It was red and white, about two or three inches square.

Q. 16. I now show you the book marked "Samples to 1869, Thomas Dolan," and ask you to look through that book and state whether you find in it the sample which you say Mr. Truitt directed your attention to.

A. I have looked through the book and I do not find that sample in it.

Q. 17. Do you recognize that book?

A. It is a book similar to the one I saw. When I saw it it laid open.

Q. 18. Please look at the sample in this book marked Exhibit Dolan No. 3 and state when first, according to your recollection, fabrics having that design were made by Thomas Dolan.

A. Three or four years ago.

Q. 19. Do you remember what part of the page that sample was on that Mr. Truitt showed you?

A. No.

Q. 20. Did he also show it to the other workmen?

87 A. Yes; those that worked there were all called around to know if they remembered Boot making it.

Q. 21. Can you give us the names of any of those men?

A. Yes; Edward McDevitt was one, and there was Mr. Truitt, and Mr. Dolan was looking on, and Mr. Jackson.

Q. 22. What was the general impression of the workmen with regard to that sample, if you know?

A. I did not know what their impression was.

Q. 23. What kind of goods did this "Exhibit Dolan No. 3" take the place of?

A. What we call the plain nubia.

Q. 24. Do you remember the making a fabric called the single pillar?

A. Yes.

Q. 25. When was that?

A. When we first started upon that class of goods, about four years ago.

Q. 26. If a fabric like Exhibit Dolan No. 3 had been made in Dolan's place as far back as 1868 or 1872, would you or not have known of it?

A. Yes.

Q. 27. Do you now only believe that such a fabric was not made there during the time stated in my last question or do you know that it was not made there?

A. I could take an oath that it was not made while I was there—this fabric, I mean, made into an article (pointing to Dolan No. 3).

Q. 28. Did you work in the same room with Jackson and Boot?

A. Yes.

Q. 29. Were you or not interested in knowing all new things that were brought out on the warp machines of Dolan & Co. while you worked in that shop?

A. I liked to look at all these things.

Q. 30. Now, is it not possible that in 1870 Jackson may have made a great many pieces of such fabric on his warp machine in Dolan's place without you knowing it?

A. No; not to be made into an article; bits he may have made and I not have seen them.

Q. 31. When this suit was first talked about in Dolan's shop,

88 was there in that shop any general belief that the double-pillar fabric had been made there long before?

A. No; there was no one there but me and Jackson and a youth in the shop at that time; there were girls.

Q. 32. Now, afterwards, did you not hear an expression of the general belief in that shop to the effect that a sample had been fixed up for this suit, or statements to that effect?

A. I never heard that in the shop, but I heard it outside the shop in Philadelphia.

Q. 33. How came you to hear it? Please state fully all you know regarding it.

A. Because they said that the article had never been made before into a fabric like that. We was talking about it outside. By "we" I mean Thomas Langham, a man who worked at Dolan's, and myself. I don't remember whether I talked to others about it.

Q. 34. About how long did you make the "single-pillar" fabric?

A. I think it was for about two seasons.

Q. 35. After you stopped making the single-pillar fabric what style was adopted to take its place?

A. The double pillar.

Q. 36. Was that the first time that a double-pillar fabric was ever made by Dolan?

A. In the nubia; yes; it was the first I ever saw.

Q. 37. State whether you ever saw such a fabric in anything else than a nubia.

A. No.

Q. 38. When this change from the single-pillar to the double-pillar fabric was made did you understand why the change was made?

A. Because we was informed that an injunction had been laid upon the single pillar.

JOHN MITCHELL.

Sworn to before me this 5th day of November, 1884.

SAM'L R. BETTS,
*United States Com'r, Southern Dist. of New York.*

89 Defendant's counsel asks by telegram for a postponement of the case until Wednesday, next week.

Complainant's counsel now consents to an adjournment until November 14th, and states that he will produce the witness Mitchell for cross-examination at that time, provided defendant's counsel gives him one day's notice of his desire to cross-examine.

(Adjourned to Wednesday, November 14, 1883, 11 a. m.)

WEDNESDAY, *November* 14, 1883—11 a. m.

Met pursuant to adjournment.

Present: Briesen and Steele, counsel for complainant.

Counsel for complainant produces the witness, John Mitchell, for cross-examination, defendant's counsel having given notice that he desires to cross-examine the witness to-day.

Counsel for complainant states that the witness was produced at eleven o'clock and has waited at the place of examination until half past twelve o'clock, and that defendant's counsel has not appeared to cross-examine.

Adjourned until new notice.

WEDNESDAY, *December* 5, 1883—11 a. m.

Met pursuant to new notice.

Present: A. v. Briesen, Esq., of counsel for complainant, and John R. Bennett, Esq., of counsel for defendants.

(Adjourned by consent until January 5, 188–, at 11 a. m.)

90

JENNINGS *ag'st* KIBBE.

SAME *vs.* DOLAN.

NEW YORK, *January* 5, 1884.

Present: A. v. Briesen, of counsel for complainant, and Geo. Harding, of counsel for defendant.

Met pursuant to adjournment.

Mr. WARREN P. JENNINGS, being called by complainant as a witness in his own behalf, and being first duly sworn, testifies as follows:

My name is Warren P. Jennings; I am thirty years of age; reside at Brooklyn, N. Y.; my occupation is a lace-maker—a member of the firm of A. P. Jennings & Son; I am one of the complainants in this suit; I am one of the patentees mentioned in the patent No. 218,032, which is one of the patents on which this suit is based.

Q. 1. Did you make any nubias under that patent?

A. Yes; in considerable quantities for two or three seasons.

Q. 2. State how or by what means these nubias were produced.

A. We made them on a warp machine and we made them with three bars, the warp being in two bars and the purl in one.

Q. 3. How did you get the idea of making these nubias?

91 A. The first we made a fillet net of silk, a large square net with a double pillar. We made that for one or two years; that went out, and then, to take its place, we tried to get a more elaborate net. We made samples of the single pillar and the double pillar on two classes of machines, or, rather, we were experimenting on two classes of machinery; that is the way we got at it by trying to get something to take the place of the fillet net.

Q. 4. What, if any, difficulties did you meet with in endeavoring to manufacture this kind of net?

A. Our first difficulty was to get a loop long enough on the sides; then when that was overcome and we began to make the goods our next difficulty was in making the selvage of the fabric. We made a number of experiments on the sizes of the yarns and the number of motions and the best size to make the hole.

Q. 5. Please look at Exhibit Dolan No. 3, in book marked Samples to 1869, Thomas Dolan, and state when first you saw that exhibit in that book.

A. I think it was in the spring of 1881.

Q. 6. Describe what you observed at that time in reference to said exhibit.

A. I saw the sample as it appears now, except that it was newer and not mussed up so and not so ravelled; I observed that it had the appearance of being pasted in over another sample, and that the book had the appearance of having had a red sample under it.

Q. 7. How did you find the "appearance of having had a red sample under it" in that book?

A. I saw the signs of it; I saw pieces of red sticking to it, and I saw gum that did not correspond with this sample; I mean that the signs of gum on the book showed traces of another sample.

Q. 8. Were those red pieces at that time clearly apparent or faintly?

A. I would not have seen them except I was looking at this sample very critically.

Q. 9. To what extent did you observe these red pieces at that time?

92 A. There were quite a number of small fragments, pretty evenly distributed over the space which the sample occupied, where you could see the paper.

Q. 10. Are they or any of them still there now?

A. There are a great many of them.

Q. 11. How can we find them, tell us, please?

A. You can see them with your naked eye.

Q. 12. Will you please point some of them out to the examiner?

(The examiner is requested by complainant's counsel to certify what the witness shows him.)

A. I have pointed out the red fragments in all parts of the gum.

(The examiner certifies that the witness pointed out to him on the gum what the witness claims to be the red fragments referred to.)

Q. 13. Can you state, from inspection with the naked eye or with the assistance of a magnifying glass, of what material these red fragments consist?

(Defendant's counsel objects to this question and to all the previous testimony in reference to Exhibit Dolan No. 3, for the reason that the witness is not an expert and is unqualified to give an opinion on the said subject.)

A. I can. They are of wool or worsted.

Q. 14. How are you qualified to express the opinion that they are of wool or worsted?

(Same objection.)

A. I have been in almost daily contact with silk, wool, and cotton for fifteen years. It is my business to handle those goods.

Q. 15. Will you please once more examine said exhibit and state whether the same shows that the lower streak of gum on the paper beneath it ever served to connect the lower part of the exhibit to that paper?

(Same objection.)

93 A. Some of the sample shows signs of having been gummed to the paper, but all of the sample does not show the marks of gum to correspond with the gum on the paper.

Q. 16. From the appearance of the exhibit and of the paper beneath it, do you find that the gummed surface on the paper originally served to hold that exhibit?

(Same objection.)

A. No; I think not.

Q. 17. What are your reasons for that opinion?

(Same objection.)

A. The gum is higher up than the sample and bears marks of something being torn off.

Q. 18. Does or does not the upper part of the gummed portion indicate that an open reticulated fabric, like the exhibit, had at one time occupied the place of that exhibit, or that a closely print or woven fabric, like the one immediately adjoining the exhibit, had originally occupied the place of the exhibit?

(Same objection, and also as leading.)

A. I don't think the signs are distinct enough to tell positively. The appearance of part of it is of a solid work, and part has taken the gum so lightly that you can't distinguish.

Q. 19. State how the said exhibit, when you first saw it in the book, compared as to whiteness and elasticity with the other samples which that book contains.

(Same objection.)

A. When I first saw it it was noticeably white and lofty. Its elasticity I know nothing about. By lofty I mean that the yarn was full and open and not drawn down and pressed. It compared with them by being noticeably whiter and loftier.

Q. 20. How does it compare to-day in that respect with the other samples?

(Same objection.)

94 A. Well, I should say it shows evidence of being more handled than the rest of the samples and the color has more nearly approached the other whites. I should say it looks loftier, because it was handled now; it has the appearance of a handled article.

Q. 21. How long is that sample, Exhibit Dolan No. 3?

(Same objection.)

A. It is seven inches on the left-hand side and six on the right.

Q. 22. Is it of such a size that it will wholly cover the gummed portions on the paper to which it is secured?

(Same objection.)

A. It never would cover all the space gummed.

Q. 23. Are there any samples in that book other than Exhibit Dolan No. 3 that do not fully cover the gum on the paper?

(Same objection.)

A. Here is one. I see since that is an empty space. The general appearance is that the gum does not show around the samples. Most of the samples have the appearance of having the gum on the sample before it is put into the book.

(Direct examination closed.)

WARREN P. JENNINGS.

Sworn to before me this 5th day of January, 1884.

SAM'L R. BETTS,
*United States Comm'r, South. Dist. of New York.*

Recess until 1.15 p. m.

95 Met after recess.

Cross-examination waived by defendant's counsel.

Mr. John R. Bennett, defendant's counsel, now requests the examiner to take personal charge of the books marked Samples to 1869, Thomas Dolan, containing the fabric "Ex. Dolan No. 3," and retain it in his possession until delivered to the court on the argument of cause, that the court may have the exhibit for its inspection in the precise condition in which it was when testified to by the last-named witness, Warren P. Jennings, and if necessary to further refer to said exhibit during the taking of testimony, it be only in the presence of the examiner, and such examination as will enable him at the close of taking testimony to certify that the exhibit is in the same condition as when testified to by the witness Jennings.

Adjourned to Monday, Jan. 7th, 1884, at 11 a. m.

MONDAY, *January* 7, 1884—11 a. m.

Met pursuant to adjournment.

Present: A. v. Briesen, of counsel for complainant, and John R. Bennett, of counsel for defendant.

SAMUEL R. BETTS, being called as a witness on behalf of the complainant and first duly sworn by John A. Shields, examiner, testifies as follows:

My name is Samuel R. Betts; my age is 29 years; I reside in the city of New York; I am the examiner before whom the testimony in behalf of complainant in this case has been taken. I am testifying under a subpœna served on me this morning.

Q. 1. Were you personally present during the examination of Mr. Warren P. Jennings on the 5th of January, 1884?

A. I was and personally took down the testimony in writing.

96 The record of Mr. Jennings' said examination contains the following, to wit:

"Q. 12. Will you please point some of them out to the examiner? (The examiner is requested by complainant's counsel to certify what the witness shows him.)

"A. I have pointed out the red fragments in all parts of the gum.

"(The examiner certifies that the witness points out to him on the gum what the witness claims to be the red fragments referred to.)"

—. What did the witness point out to you on the gum in response to the twelfth interrogatory, which, with the answer thereto, has been quoted?

(Objected to, as the court can best ascertain if any such fragments are there upon a personal inspection of the exhibit, it being now in precisely the same condition as when examined by the witness Jennings, and will remain in that condition, the exhibit having been in the custody of the examiner, and he having been requested to retain custody of it until the final hearing.)

A. The witness pointed out to me some little reddish hairs which are sticking in the gum. The exhibit has been in my possession ever since he did so, and is now in the same condition as it was when he called my attention to these reddish hairs.

Q. Did you see the reddish hairs to which you have testified with your naked eye or with the help of a magnifying glass?

A. I saw them both with my naked eye and with a magnifying glass.

Cross-examination waived.

SAMUEL R. BETTS.

Sworn before me—
JOHN A. SHIELDS,
*Examiner, &c.*

Adjourned to Thursday, January 17, 1884, at 11 a. m.

97 THURSDAY, *January* 17, 1884—11 a. m.

Met pursuant to adjournment.

Present as counsel: A. v. Briesen, Esq., for compl'ts; Geo. J. Hading, Esq., for def't.

Dr. T. O'CONOR SLOANE, the witness called on May 21, 1883, now continues his testimony and answers the third interrogatory addressed to him.

A. I have read all or nearly all of the testimony referred to in question 3.

Q. 4. Please state what, if any, evidence you find in the book which is marked "Samples to 1869, Thomas Dolan," as to whether or not the piece of fabric marked "Exhibit Dolan No. 3" has been originally placed and secured in that book in the place which it now occupies.

A. Evidence to the effect that said sample was originally fastened in that place, was then removed, and subsequently replaced in the present position is wanting. Under the piece of fabric in question

are the paste-marks. These paste-marks have adhering to them filaments of wood. Some of these filaments are red, indicating that a piece of fabric containing red worsted has adhered to the paste and left some of its filaments adhering. The lower pasted area has apparently had something torn off of it, presumably a sample of worsted goods, which evidently adhered with considerable tenacity, as pieces of the paper have been torn off in spots; hence whatever was removed from that pasted spot adhered strongly thereto. The sample of worsted itself, which purports to have been originally pasted thereto, seems in the first place very bright and fresh in appearance, showing no signs of having been violently torn from such a pasted surface, except in spots where, towards its extremity, small quantities of paste are still adhering to the wool, and in some places small pieces of paper are still adhering thereto. The deduction from all this is that had the sample been originally pasted in so as to adhere to the pasted area, in its removal it would have carried off with it a number of pieces of the surface of the paper. The sample on its under side shows very few of such pieces of paper adhering to it. It also should show marks of paste distributed
98 over the comparatively large portion of its area. Such paste-marks are wanting, a very few and small spots showing signs of paste. The paste-marks in the book show that some piece of fabric, apparently larger in size than the present, has been pasted firmly in the book, and then torn out with some degree of force, enough to tear off pieces of the surface of the paper. Had so loosely knitted a piece of fabric been torn from so firmly adhering a pasted surface it would seem probable that not only would its under surface be marked with paste, but that considerable marks of deterioration could be found that are not visible in the present sample. The presence of red filaments makes it probable that the original sample pasted in this place contained red worsted.

Q. 5. How are the filaments of red and other color which you find adhering to the paper beneath the sample in question distributed with reference to the parts from which paper has been torn that you testified about?

A. The red filaments in many cases overlie and are situated in the neighborhood of spots whence the paper has been torn.

Q. 6. And how are they located with reference to the meshes of the fabric that still adhere to the paper in that book?

A. They are distributed over the pasted area without regard to any system of meshes, as far as discernible. Between the adhering pillars or in the intervals between the meshes where such are adhering to the paper there seem to be no adhering red filaments. In one of the meshes towards the right, however, a very small red and a black filament are discernible.

Q. 7. Is it or not possible that these fibers or filaments which you find on the paper in question have been transferred from any fabric which is pasted on the opposite page?

(Objected to as leading by defendant's counsel.

A. The red filaments are thickly distributed over the lower pasted

area, opposite to which is white worsted, thus making it very improbable that they were transferred from the opposite page.

Q. 8. How does the fabric "Exhibit Dolan No. 3" compare as to its shade and loftiness with the other fabrics in the book?

A. It seems remarkably fresh in color and noticeable for
99 its loftiness. In it is noticeable an absence of any appearance of compression, such as should be anticipated in the case of a fabric that had been subjected to long compression in a book.

Q. 9. When first did you see that sample?

A. It was about a year ago; perhaps more.

Q. 10. What facts, if any, did it disclose to you at that time?

A. As far as I remember, substantially the same as it now discloses.

Q. 11. Mr. Truitt testifies in behalf of the defendants that in 1866 this fabric was made and gummed into the book in the same place which it now occupies, and Mr. Jackson testifies in behalf of the defendants that he was present in 1870 when the first experiments were made on the loom towards producing that fabric. How does that evidence, in connection with the appearance of the exhibit and of the book, assist you in determining the character of the fabric that first occupied the place said exhibit now occupies in said book?

A. Such evidence does not harmonize with the fresh appearance of the sample and the other features of appearance noted in my testimony. There is a discrepancy also between the dates of production, as given in your question, that, in connection with the date of the book, make it very doubtful if this was the original sample pasted in that place, the book being dated "to 1869."

(Counsel for defendant objects to the last question and answer as argumentative and attempting to set up a discrepancy which does not exist between the testimony of Messrs. Truitt and Jackson, and if any such discrepancy did exist it is matter for the court, and not the witness, to decide.)

Direct examination closed.

Recess to 1.30 p. m.

100 Met after recess.

Cross-examination waived by counsel for defendants.

T. O'CONOR SLOANE, *Ph. D.*

Sworn to before me this 17th day of January, 1884.

SAM'L R. BETTS,

*United States Commissioner, Southern District of New York.*

Further examination of witnesses in behalf of complainant is hereby adjourned to Tuesday next, January 22d, at 11 o'clock a. m., at the place of business of Conyers Button, in Germantown, Pennsylvania; and it is agreed that testimony to be taken in said Germantown and in Philadelphia shall be taken before Samuel R. Betts, Esq., after the witnesses to be examined shall have been sworn by a notary public, and Mr. Betts is requested to bring with him to

such place of examination the book marked "Samples to 1869, Thomas Dolan."

Adjourned as above stated.

GERMANTOWN, *January* 22*d*, 1884.

Met, pursuant to adjournment, at the office at Conyers Button, Germantown, Pennsylvania.

Present: Mr. George J. Harding, counsel for defendant, and Mr. Antonio Knauth, of counsel for complainants, and Mr. Samuel R. Betts, United States commissioner.

CONYERS BUTTON, a witness called on behalf of complainants in rebuttal, and being first duly affirmed by Robert Thomas, Esq., notary public for the Commonwealth of Pennsylvania, residing in Philadelphia, testified as follows in answer to questions by complainants' counsel:

101 Q. 1. Please state your name, age, residence, and occupation.

A. Conyers Button; age, 47; occupation, manufacturer of fancy knit woollen; residence, Germantown, Philadelphia.

Q. 2. How long have you been a manufacturer of fancy knit wool goods in Germantown?

A. About 25 years.

Q. 3. Are you familiar with the various styles of woollen knit fabrics which are sold in the market of Philadelphia; and, if so, for what time have you been familiar with them?

A. I have been familiar with them since I started in business; for about 25 years.

Q. 4. Please look at a piece of fabric now before you, marked "Exhibit Dolan No. 3," in book marked "Samples to 1869, Thomas Dolan," and state whether you understand that fabric, and of what it consists?

A. This fabric, I understand it, is joined together in this way—I could not make that on the machinery—it consists of a chain and filling—that I know—with the parts joined.

Q. 5. Have you heretofore made an affidavit in the case of Abraham G. Jennings and Warren P. Jennings, one of the suits in which your testimony is now being taken on a motion for an injunction on the part of the complainants?

A. I have, if you have reference to that (pointing to a printed affidavit in the hands of complainants' counsel).

Q. 6. I now show you a printed copy of an affidavit entitled in the suit of A. G. Jennings *et al. vs.* Thomas Dolan, which purports to be subscribed and sworn to by you before Willy G. E. Schultz, notary public, Kings Co., N. Y.; certificate filed N. Y. Co. on Nov. 29, 1881. Have you made such an affidavit and are the statements contained therein true? Please read it carefully.

A. I have. They are true.

Q. 7. Have you had any business transactions with the defendant, Thomas Dolan, and what, if any?

A. Yes; in buying out his knitting machinery.

Q. 8. Did you also receive at the same time a number of books from him containing samples of knit fabrics made in his factory?

(Objected to by defendant's counsel as grossly leading.)

102 A. We did.

Q. 9. When was that?

A. In 1883.

Q. 10. Please examine the books now before you, containing knit fabrics, with a view of finding samples of a like fabric as the one before you, marked "Ex. Dolan No. 3," and state at the end of your examination what books you have examined, how they are marked, and whether you have found therein any pieces of fabric of the same construction.

A. I have before me and have examined two books containing samples, which are marked "Samples to 1869, Thomas Dolan;" also two books containing samples, each marked "Samples, 1870;" also a book containing samples marked "Samples fancy goods, 1870;" also a book containing samples which is marked on its back "Samples 1869, 1870," and on its face "Samples, 1868, 1869;" also a book containing samples which is marked on its back "Samples to 1869, Thomas Dolan," and on its face "Samples, 1871, Thomas Dolan." All these books are similar in appearance and size to the book now shown me containing the fabric "Exhibit Dolan No. 3." I have not found in these books any fabric similar to the sample marked "Exhibit Dolan No. 3."

Defendant's counsel demands that these books mentioned in the last question and answer be put in evidence.

Q. 11. Are these books all the books containing samples up to and including the year 1870 which you obtained from Mr. Thomas Dolan at the time when you bought his knitting machinery?

A. They are not all.

Defendant's counsel again demands that the books mentioned in question and answer No. 10 be put in evidence, and requested that the counsel for the complainants state on the record whether he will so comply or not.

Q. 12. What other books besides those examined by you containing samples before and including the year 1870 did you obtain from Thomas Dolan?

A. I can't answer that question.

Q. 13. Do you mean that you are not positive whether you
103 obtained any other books as above described from Thomas Dolan?

(Objected — as leading by defendant's counsel, who also requests that the examiner read to the witness question and answer No. 11.)

A. I understand two books have been returned.

Q. 14. Are the books before you, all the books which you are able

to find now, and have you made a careful search for books containing samples up to and including 1870?

A. They are all that I can find. I have searched carefully.

Q. 15. Were the two books to which you testified returned to Thomas Dolan?

A. I do not know.

Q. 16. Do you remember when they were returned?

A. I do not.

Q. 17. How do you know that the books examined by you were not all the books containing samples before and including the year 1870 which you obtained from Thomas Dolan?

A. From information from my nephew that two were returned.

Q 18. As far as you are informed, only two books have been returned?

(Objected to as leading.)

A. Yes.

Q. 19. Do you use the books before you constantly for reference in your factory?

A. We do in our business.

Q. 20. Have you ever seen in the market in Philadelphia any fabric of the construction of the fabric marked "Dolan Exhibit No. 3" before Messrs. Jennings brought out those goods in 1878 or about that time?

A. I did not.

Q. 21. Do you carefully watch what kinds of knit goods appear on the market in Philadelphia, and have you done so ever since you went into the manufacture of such goods?

A. I have, and I do.

104 Complainants' counsel offers in evidence the printed copy of the affidavit of Conyers Button, above testified to by him, and the same is marked "Complainants' Exhibit Button Affidavit," S. R. B., U. S. Comm'r, January 23, 1884.

Complainants' counsel invites defendant's counsel to examine the books to which this witness has testified, to cross-examine the witness with reference thereto, and states that they will remain in the witness's charge, accessible to the defendant's counsel.

Q. 22. Would you have seen goods of the construction of the fabric "Exhibit Dolan No. 38" or heard of their existence if they had been sold in the Philadelphia market prior to the time when they were offered by Messrs. Jennings, or their agents, about the year 1878?

(Objected to as leading.)

A. I think I should.

Direct examination closed.

Cross-examination:

Cross-Q. 23. Could you state each and every knitted fabric that has been introduced into the market from prior to 1869 to 1878?

A. Impossible.

Cross-Q. 24. If certain fabrics were shown to you would you be able to swear that they were made prior to any certain date?

(Objected to by complainants' counsel as being too wide and general and not referring to knitted fabrics alone.)

(Question withdrawn.)

Cross-Q. 25. If any knitted fabric were shown to you would you be able to swear that it was made prior to any certain date?

(Objected to as being too general and improper.)

105 A. I couldn't say.

Cross-Q. 26. Could you tell every knitted fabric that was made in 1878 by Thomas Dolan & Co.?

A. I could not.

Cross-Q. 27. Could you tell every knitted fabric whose design was more or less novel in 1878?

A. I could not.

Cross-Q. 28. You could not tell for a year prior, then, could you?

A. I could not.

Cross-Q. 29. Then what you have sworn in reference to the manufacture and sale of knitted fabrics similar to "Exhibit No. 3" is on belief, and not on positive knowledge. Is that not so?

A. That particular stitch was entirely new to me.

Cross-Q. 30. Can you tell every stitch that has been made from 1860 to date?

(Objected to as too general.)

A. I could not.

Cross-Q. 31. Could you tell every novel stitch that came out in 1873?

(Same objection, and as irrelevant.)

A. I could not.

Cross-Q. 32. Can you do it for any one year?

(Same objection.)

A. No.

Cross-Q. 33. Can you answer those last questions in reference to the Philadelphia market?

(Same objection.)

A. My answer would be the same.

Cross-Q. 34. There are some stitches which are successful stitches, and others which are failures; could you name the successful stitches of any one year in the Philadelphia market?

(Objected to as irrelevant, immaterial, and too general.)

106 A. I could by reference.

Cross-Q. 35. You could not do it out of your own mind at present, could you?

A. I could not.

Cross-Q. 36. You can't tell the amount of goods sold by every firm in your line of business in the city in any particular fabric or stitch in a year, could you?

A. I could not.

Cross-Q. 37. Could you tell how many new stitches Thomas Dolan brought out in any one year?

A. I could not.

Cross-Q. 38. Could not Thomas Dolan have brought out this stitch "Exhibit Dolan No. 3," put a quantity on the market, withdraw it, and ten years or more afterwards would you be willing to swear he had not put such a stitch on the market?

A. I could not swear to that.

Cross-Q. 39. Then will you swear that Thomas Dolan & Co. did not put such a stitch on the market prior to 1870?

A. I could not.

Cross-examination closed.

Redirect examination:

Redirect Q. 40. What, if anything, is there remarkable in the stitch of the fabric "Exhibit Dolan No. 3"?

A. Its loftiness and novelty.

Redirect Q. 41. Is it a stitch of the same character with the other stitches commonly used?

(Objected to as leading.)

A. Yes, similar stitch; what I mean by that is that it is a knitted fabric.

Redirect Q. 42. Is there any peculiarity in its appearance compared with other knitted fabrics?

(Objected to as trying to draw his own witness out.)

A. It is new and different.

Redirect Q. 43. Is there a lively competition in your trade?

107 A. Yes.

Redirect Q. 44. Have you been a competitor of Thomas Dolan, and for what time?

(Objected to as leading.)

A. Yes; for about 20 years.

Redirect Q. 45. What measures do you take to keep informed about the novel patterns of knit fabrics which appear on the Philadelphia market?

A. As we sell the goods displayed in the market; that's all.

Redirect Q. 46. Would it be possible, to the best of your judgment, that fabrics of the like construction as Exhibit Dolan No. 3 would have been sold by Thomas Dolan on the Philadelphia market between 1867 and 1870 without your being in any way informed about it?

A. We should have heard of it.

Redirect Q. 47. And you have never heard of it, have you?

(Objected to as grossly leading.)

A. I have never heard of it.

Redirect closed.

Recross-examination by Mr. HARDING:

Recross-Q. 48. Can you describe in technical language the stitch and knitted fabric marked "Exhibit Dolan No. 3"?

A. It is an open loop stitch.

Recross Q. 49. What is the peculiarity about this open loop stitch over other open loop stitches?

A. It is more open and lofty and will give greater bulk for the money.

Recross Q. 50. Is this the most successful stitch that has ever been on the market?

A. No.

Recross Q. 51. Is it peculiarly successful; does it belong to the most successful class?

A. It does.

108 Recross-Q. 52. Did you have any very successful stitches prior to 1870?

(Objected to as immaterial.)

A. Yes.

Recross-Q. 53. Can you name them all?

(Same objection.)

A. Not at this moment.

Recross-Q. 54. Could you name all of Thomas Dolan's very successful stitches prior to 1870?

(Same objection.)

A. No.

Recross-Q. 55. Could you name them all in 1870?

(Same objection.)

A. No.

Recross-Q. 56. Could you name them all in any one year?

(Same objection.)

A. No.

Recross closed.

CONYERS BUTTON.

Subscribed to before me this 22d day of January, 1884.

SAM'L R. BETTS,
*United States Comm'r.*

CORNELIUS JACKSON, a witness of defendants, called by complainants' counsel to be further cross-examined, and being first duly sworn by Robert Thomas, Esq., notary public for the Common-

wealth of Pennsylvania, residing in Philadelphia, testifies as follows in answer to questions by complainants' counsel:

It is stipulated by counsel for complainants and defendant that the cross-examination now proposed to be taken by complain-
109 ants' counsel of this witness is taken subject to any objections and redirect examination by defendant's counsel, Mr. JOHN R. BENNETT, who is not present, within a reasonable time.

Q. 1. How long does it take to make a warp?
A. It depends on the length.
Q. 2. How long are the warps usually?
A. It depends on the fabric you are making.
Q. 3. How long are the warps for nubia fabrics, usually?
A. I have had them from 6 to 40 rings.
Q. 4. How long would it take to make one of six rings?
A. It depends on the fabric you are making.
Q. 5. How long would it take to make a warp of six rings of the fabric now shown to you, marked "Exhibit Dolan No. 3?"
A. From four to six days.
Q. 6. Do you remember how long the warp of fabric like Dolan Exhibit No. 3 was which you made in 1870?
A. I do not.
Q. 7. Do you remember whether it was a long warp or a short warp?
A. A long warp.
Q. 8. Do you think that it was more than twenty rings?
A. No; I think not.
Q. 9. Between ten and twenty?
A. That — more than I can say there.
Q. 10. So it may have been shorter than twenty rings?
A. It might have been shorter.
Q. 11. Did you make only one warp of that fabric in 1870?
A. I made two or three warps.
Q. 12. Do you mean two or three warps of the double pillar or do you mean two or three warps including the double and the single pillar?
A. Including both.
Q. 13. Do you remember how much you made of the double pillar?
A. I do not.
Q. 14. Then you do not remember how long the warp was that you made of the double pillar?
A. I do not.
Q. 15. I read to you now a question marked No. 24, put to you by Mr. Bennett on your direct examination as witness for the
110 defendants, and your answer thereto. Did you mean to say by your answer, "Made in all one piece the width of the loom?"
A. I meant to say "in all." When we take six breadths and put them together I call that one piece.
Q. 16. Then you made all the fabric which you made at that time into one piece?

A. No, sir; I took some of the nubias and joined them together into one piece?

Q. 17. How did the fabric appear on your loom? Did the chains or pillars lie parallel to each other, or did it give the appearance of a net on the loom before it was pulled or stretched?

A. The appearance of a net.

Q. 18. You would see open spots between the places where the pillars were joined?

A. Yes, sir.

Q. 19. Where was the fabric stretched or pulled?

A. I don't know.

Q. 20. Do you remember that it was pulled or stretched at all?

A. I do not.

Q. 21. Why is such fabric usually stretched or pulled?

A. That I don't know.

Q. 22. I show you a printed certified copy of an affidavit *entitled* in this court, in the suit of Abraham G. Jennings *et al. vs.* Thomas Dolan, which purports to be subscribed and sworn to by you before R. S. Child, Jr., notary public, on December 15, 1881. Please read it carefully and state whether you made such an affidavit, or whether the statements contained therein are true, or point out any errors which you may find therein.

A. They are true; I find no errors; I made such an affidavit.

Said affidavit is offered in evidence by counsel for complainant and marked "Complainant's Exhibit Jackson Affidavit," S. R. B., U. S. Comm'r January 23, 1884.

Q. 23. Did you put fabric like Exhibit Dolan No. 3 on the loom in 1879?

A. Yes.

111 Q. 24. In speaking of fabric like Exhibit Dolan No. 3 you include both the single and the double pillar?

A. In that year; yes.

Q. 25. Did Truitt fetch up only one sample to you in 1879 for reproducing this fabric?

A. One sample.

Q. 26. Did you make that fabric then exactly according to the sample?

A. Yes.

Q. 27. Do you remember whether Henry Boot's sample loom was in a cage?

A. It was not a wire cage; it was boarded in.

Q. 28. It was boarded in so as to be screened off from the looks of outsiders?

A. Yes.

Q. 29. Was it open on one side altogether?

A. Yes.

Q. 30. Could you see in passing through the room what was on Boot's sample loom?

A. No.

Q. 31. So you did not see Boot design this fabric, Exhibit Dolan No. 3?

A. I saw it on his loom.

Q. 32. Had he a loom besides his sample loom?

A. Yes; he'd take any loom in the shop.

(There is no Q. 33.)

Q. 34. Then he did not design this fabric on his sample loom?

A. I saw it on his sample loom.

Q. 35. Then you saw it on two looms?

A. Yes.

Q. 36. Where was the loom located on which he made the fabric, beside his sample loom?

A. Third loom from the door, No. 315.

Q. 37. Was Boot usually working at that loom?

A. No.

Q. 38. Why do you call it his loom No. 315?

A. I never did call it his loom.

Q. 39. In working the fabric Exhibit Dolan No. 3 did you succeed with the work in the beginning and through the whole piece?

112 A. Not at the beginning.

Q. 40. Was that fabric a nubia shape or was it the whole width of the loom?

A. Nubia-shaped.

Q. 41. Is nubia-shaped a shape which is wider in the middle of the piece and narrower towards both ends?

A. No; it is all the same width.

Q. 42. Do you distinguish the nubias which are all contained in one long continuing piece on the loom?

A. They are marked on the loom while the piece is being woven and are cut afterwards.

Q. 43. How do you mark them on the loom?

A. By a mark or a slack place—say half an inch wide or a single thread.

Q. 44. In looking at the piece on the loom the only change which would be noticeable in the reticulated fabric would be this mark or slack place?

A. Yes.

Q. 45. Did you ever see, during the nine months before you worked this fabric at Dolan's factory, any other pieces of a like construction with Exhibit Dolan No. 3 with the double pillar?

A. No.

Q. 46. Did you see what other patterns were made during that time in the warp-loom shop?

A. Yes; diamond stockings.

Q. 47. You testified that in making the fabric Exhibit Dolan No. 3 you did not succeed with it in the beginning. What was the trouble with it?

A. I don't know.

Q. 48. Do you remember how much of the piece which you were then making you succeeded in making well?

A. No.

Q. 49. Can you swear positively that at that time you were making more than one piece of the double-pillared fabric?

A. Yes.

Q. 50. How much more did you make?

A. Six breadths; one strip is a breadth.

Q. 51. Of what does one strip consist?

A. It consists of one breadth.

Q. 52. Was loom No. 315 located on the right side of a door?

113 A. On the right going into the room.

CORNELIUS JACKSON.

Subscribed to before me this 22nd day of January, 1884.

SAM'L R. BETTS,
*United States Commissioner.*

Adjourned to January 23, at 10 o'clock, at office of George Harding, Esq.

PHILADELPHIA, *January* 23, 1884—12.30 p. m.

Met at No. 1112 Frankfort avenue, pursuant to adjournment taken from the office of George Harding at 10 a. m.

Present: Counsel as on January 22d.

JAMES PHIPPS, a witness called in rebuttal on behalf of complainants, *and* having been first duly cautioned and sworn by Joseph N. Tees, notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, deposes as follows in answer to questions by complainant's counsel:

My name is James Phipps; my age is 59; I reside at No. 1112 Frankfort avenue, Philadelphia, where I keep a saloon.

Q. Have you learned any trade?

A. I was in the knitting business all my life up to two years ago. I was in the business 38 years; first in England until 1860, since then in Philadelphia. I was with Soudenberger from 1860 to 1875. I was by myself in the same business for 1875, 1876, 1877, and after that I was back at Soudenberger's again.

Q. 2. Had Soudenberger a knitting mill in Philadelphia during the time when you were in his employ?

A. Yes; at Frankfort road and Wildey street.

Q. 3. What position did you hold while you were in his employ?

A. I was foreman and designer of the fancy knitting business all the while.

Q. 4. Were you familiar with all the styles of knitted goods which were made by him during that time, and also with the

114 different styles of knitted goods which were exposed for sale on the Philadelphia market during all that time?

A. Well, I could not say that I was with all during that time.

There might be some that I did not see on the Philadelphia market. I was familiar with all that Soudenberger made.

Q. 5. Did you take pains to make yourself familiar with the different styles of knitted goods which were sold in Philadelphia?

A. Yes; by going around and seeing them at different stores.

Q. 6. Did you go through the stores at Philadelphia for the purpose of seeing what new patterns of goods had appeared?

(Objected to as grossly leading.)

A. What I could get into; some I could not get into.

Q. 7. Please look at sample now before you, marked "Exhibit Dolan No. 3," in book of "Samples to 1869, Thomas Dolan," and state whether you understand its construction and describe the same shortly.

A. Yes; I understand it; that can either be made by two bars or four.

Q. 8. Can you not describe what it appears to be—of what parts or figures it consists?

(Objected to, as the question contains the substance of what the counsel desires witness to answer.)

A. Well, I don't know what you mean by that; no; I cannot.

Q. 9. Did you ever see fabric of a like construction in the market in Philadelphia before the time when it was brought out by Jennings a few years ago?

(Objected to as leading.)

A. No; the first I seen of that was in Jennings' nubia. They said it was Jennings' nubia.

Q. 10. When did you first see it in Jennings' nubia?

A. I could not even say that, but I saw it soon after it was out. It was showed to me.

Q. 11. Was that more than six years ago?

A. Well, I could not even say that.

115 Q. 12. Was it more than fourteen years ago?

A. No; it was not fourteen years ago.

Q. 13. Was it twelve years ago?

(Objected to as leading.)

A. No; it was not as long as that. It was six or seven years ago, I should say.

Q. 14. Where did you see it first?

A. New York.

Q. 15. Did you buy one of that kind?

(Objected to as leading.)

A. No.

Q. 16. Did you procure one of the Jennings nubias at that time?

(Same objection.)

A. No; I did not think much of it, else I should at the time.

Q. 17. Do you think that if nubias of the construction of fabric

"Exhibit Dolan No. 3" had appeared on the market in Philadelphia between 1865 and 1871 you would have seen them or been informed of their existence?

A. Yes; if they had been on the market.

Direct closed.

Cross-examined by Mr. HARDING:

Cross-Q. 18. When you first saw knitted fabrics similar to "Exhibit Dolan No. 3" there was nothing remarkable about it, was there?

A. Nothing; only there was someting different to what nubias was at the time.

Cross-Q. 19. You did not think it such a more successful looking fabric than other new stitches or fabric are, did you?

A. No.

Cross-Q. 20. You cannot swear, can you, that Thomas
116 Dolan & Co. did not, prior to 1869, make such a knitted fabric and put it on the market to a more or less extent?

A. No; I can't say.

Cross-examination closed.

Redirect:

Redirect Q. 21. But, as already stated, you do not believe that it could have been sold in the Philadelphia market at that time without you having been in some way informed of it?

(Objected to as leading, and also that the counsel for complainant has no right to cross-examine his own witness and as the witness has fully testified on all points in his question.)

A. No; I don't.

Recross by Mr. HARDING:

Recross-Q. 22. Then you would have information of every knitted fabric that has been put on the market by Thomas Dolan & Co. from 1866 to the date you went out of business?

(Objected to as argumentative and as an argument not warranted by the premises given by the previous question and answer.)

A. Well, I would have all I could get hold of. There might be some things I would not get. All we could see in the market we got.

Recross-Q. 23. Would you swear that this (counsel pointed to the first sample in the book, "Samples to 1869, Thomas Dolan") was put on the market by Thomas Dolan or not?

A. No.

Recross-Q. 24. Pick out in that book all the samples you can swear were or were not put on the market by Thomas Dolan.

A. I would not pick out any and swear.

Recross-Q. 25. Can you swear that all those samples in that book were or were not on the market?

117 A. No, I can't.

Recross-Q. 26. How many of them can you swear to?

A. I would not swear to any of them.

Recross closed.

Re-redirect examination:

Re-redirect Q. 27. Have you examined any single sample in the book before you besides the samples marked "Exhibit Dolan No. 3" for the purpose of seeing how it was constructed?

(Objected to, because the witness does not even know how Exhibit Dolan No. 3 is constructed.)

A. No.

Re-recross:

Re-recross-Q. 28. Please examine every one of the samples in that book and then answer my questions in reference to them.

A. I have examined them, and I say I can't answer that.

JAMES PHIPPS.

Subscribed to before me this 23d day of January, 1884.

SAM'L R. BETTS,
*United States Com'r.*

Recess until 3.30 p. m.

3.30 p. m.—Met at Harding's office.

WILLIAM RADFORD, a witness called on the part of complainants in rebuttal, and having been first duly cautioned and sworn by Leslie Stokes, Esq., a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, testified as follows in answer to questions by complainants' counsel.

My name is William Radford; age, 51 years; residence, 1922 North Third street, Philadelphia; my occupation is a knitter; keep-
118 ing a tavern at present and have been for six or seven years. I was a knitter in England when I was 12 years old. I came to this country in March, 1864.

Q. 1. I show you *k*now a printed copy of an affidavit entitled in this court in the suit of A. G. Jennings *et al. vs.* Thomas Dolan, which purports to be subscribed and sworn to by you before Willy G. E. Schultz, notary public, Kings county, N. Y., certificate filed N. Y. Co., on Dec. 1, 1881. Please state whether you made such an affidavit and whether the facts stated therein are true.

A. I made that affidavit in New York. With an exception of the word I never have said it could not be made in the room without me seeing it.

(Complainants' counsel offers in evidence printed copy of the affidavit just referred to by the witness, and it is marked Complainants' Exhibit Radford Affidavit, S. R. B., U. S. Com'r, Jan. 23, 1884.)

(The introduction of said printed copy is objected to by defend-

ant's counsel from the fact that it is not certified, and also that from the witness' own admission it is not a true copy.)

Q. 2. Do you mean to say that you never made the statement just referred to by you, or that you do not remember now whether you made such a statement?

(Objected to as grossly leading, and this whole line of examination on the part of the complainants' counsel in attempting to lead and put statements in his own witness's mouth is entirely inadmissible. The witness has fully answered this question in his previous answer.)

A. I can't remember that I ever made such a statement to say that it couldn't be made without me seeing it.

Q. 3. How long have you been in the employ of Thomas Dolan? Give the dates as far as you remember them.

(Objected to, as the witness has never stated that he was in Thomas Dolan's employ.)

(Question withdrawn.)

119 Q. 4. Into whose employ did you go when you came over to this country from England?

A. To Thomas Garner's—I staid in his employ about three weeks; then into Mr. Subach's, of Germantown; then to John Neun's; then to George Bramley.

Q. 5. Were you ever employed by Thomas Dolan?

A. Yes; I was at Thomas Dolan's for about three years. I went there in 1869 and left in 1872, I believe.

Q. 6. Did you work in Thomas Dolan's factory or knitting mill?

(Objected to as leading.)

A. Yes; I worked there on a knitting machine.

Q. 7. In what part of the factory was it?

A. In room No. 300.

Q. 8. What kind of a knitting machine did you work?

A. Warp frame or warp machine.

Q. 9. How many warp machines were in the room where you were working?

A. Seventeen or eighteen.

Q. 10. Were you working in that room during all the time that you were employed by Thomas Dolan?

(Objected to as leading.)

A. Yes, sir.

Q. 11. Were you working in the room alone?

A. No; I was working with others.

Q. 12. How many besides you were working in that room and what were their names?

A. About sixteen. Names: William Cane, William Chamberlain, John Mitchell, Henry S. Jackson, Ed. McDevitt, William McDevitt, James Rose. That is all I now remember. Henry Boot was the foreman of the room at the time.

Q. 13. Do you know Thomas Poole?

(Objected to on the ground that the witness has named all the employees who were in the room when he was there, and the attempt to lead the witness on is entirely inadmissible.)

120 A. No; he was not working there when I was.

Q. 14. Do you know George A. Henhoeffer?

(Same objection.)

A. Yes, sir.

Q. 15. Did you ever work with him?

(Same objection.)

A. Yes, sir; he left soon after I went there.

Q. 16. Did he work with you in the same room at Dolan's?

(Objected to as grossly leading, and also that the attempt to lead and cross-examine his own witness is entirely inadmissible on the part of counsel for complainant.)

A. Yes, sir.

Q. 17. Look at the fabric marked "Exhibit Dolan No. 3" in book marked "Samples to 1869, Thomas Dolan," now before you, and state whether you understand its construction.

A. I understand this fabric in this way, but not in the way it is tied together; this is the fabric I made.

Q. 18. State whether you ever made any fabric exactly of the same construction as the piece of fabric now lying before you.

A. No.

Q. 19. What do — mean by saying, "This is the fabric I made?"

A. This tie that goes together—that holds the two together.

Q. 20. You mean to say that you made the tie that holds the two together?

(Objected to as leading and as an attempt on the part of the counsel for complainant to lead and cross-examine his own witness.)

A. No.

121 Q. 21. Now, what did you make and what did you not make?

(Objected to, as the witness has fully answered that question, and the counsel for complainant has no right to attempt to make the witness so turn and change his language that he will answer in the way the counsel puts the words into his mouth.)

A. I made this here fabric in straight trimmings—little trimmings; I did not make it tied together; I made it in straight trimmings—small trimmings.

Q. 22. When you answered the 17th question, which is now read to you, together with your answer thereto, did you, in the last sentence of your answer, refer to the whole fabric now lying before you or only to parts of that fabric?

(Same objection.)

A. I never made this the same fabric as it is now; I made it in little narrow trimmings not tied together.

Q. 23. What is the difference between the fabric you made and the fabric which is now lying before you?

(Same objection.)

A. The difference is this is tied together every inch and mine was made in straight trimmings.

Q. 24. Have you ever seen Jackson at work in the room where you were together employed by Dolan?

A. Yes.

Q. 25. How often?

A. I can't say; I could say a hundred times.

Q. 26. Did you ever see Jackson work any fabric of the same construction as the fabric "Exhibit Dolan No. 3," now lying before you?

A. No; I saw him make some in straight little trimmings, same as I made it.

Q. 27. That was without being tied together?

(Objected to as leading, and also on the same grounds as the objection to question 21.)

122 A. Yes, sir; without being tied together; some straight little trimmings; that is all I saw.

Q. 28. Had you occasion to see what kinds of fabric the other men who were employed in the same room with you were making on their looms?

(Objected to as leading.)

A. No, sir.

Q. 29. You never saw what they were making on their looms?

(Same objection as to question 27.)

A. I saw at different times what they was making on their looms; not all the time.

Q. 30. Did you ever see fabric of the construction of the piece Exhibit Dolan No. 3 made at Dolan's factory while you were in his employ?

A. No.

Q. 31. Had Henry Boot a loom for himself?

(Objected to on same ground as question 29.)

A. Yes, sir.

Q. 32. What was its size as compared with the others?

A. It was something less than 20 inches, I believe, and some of the others were 100 and 120.

Q. 33. Could you see what was being made on his loom?

(Objected to as leading.)

A. No.

Q. 34. Why not?

A. It was back of me, and I had not to go that way out.

Direct closed.

Cross-examined by Mr. HARDING:

123 Cross-Q. 35. You can't swear that fabric similar to "Exhibit Dolan No. 3" was not made in Dolan's factory while you were there, can you?

A. No, sir.

Examination closed.

W. RADFORD.

Subscribed to before me this 23d day of January, 1884.

SAMUEL R. BETTS,
*United States Comm'r.*

HENRY HENSON, a witness called on behalf of complainants in rebuttal, and having been first duly sworn by Lisle Stokes, Esq., notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, testifies as follows in answer to questions by complainants' counsel:

My name is Henry Henson; age, forty-eight; residence, 2006 Orianna street; occupation, a warper. I have been a warper eighteen years in this country, except about four years while I was foreman at Dolan's—I mean Thomas Dolan's, of Philadelphia. I am now a warper with Joseph Murphy, at Fourth and Cumberland streets. I went into Dolan's employ in the spring of 1866 and continued there about eight and one-half years. I was a warper there from four to five years, and after that I was foreman of the spoolers and warpers.

Q. 1. Did you have occasion to see the various styles of goods which were made at Thomas Dolan's factory while you were employed there?

A. Not while I was warping.

Q. 2. How afterwards?

A. Well, afterwards, after I got charge, I could go in any room I had a mind where there was any looms.

Q. 3. Examine the fabric marked Exhibit Dolan No. 3 in book marked "Samples to 1869, Thomas Dolan," now before you, and state whether you understand its construction and whether you have ever seen any fabric of the same construction made at Thomas Dolan's factory during the time when you were employed there.

A. I have done so. I understand its construction, and I never saw any fabric of the same construction made at Dolan's factory when I was employed there.

124 Q. 4. When you had charge of the warpers and spoolers did you, as a matter of fact, frequently go through the rooms in the factory and see the various styles of fabric which were made therein?

(Objected to as leading; also the witness has fully answered the question.)

A. Yes; I used to go through the rooms sometimes.

Direct closed.

Cross-examined by Mr. HARDING:

Cross-Q. 5. You cannot say, can you, that fabrics similar to "Exhibit Dolan No. 3" were not made while you were in Mr. Dolan's employ, can you?

A. No, sir.

Cross-examination closed.

HENRY HENSON.

Subscribed to before me this 23d day of January, 1884.

SAMUEL R. BETTS,
*United States Comm'r.*

Adjourned to January 24, at 10 a. m., at office of Mr. Harding.

JAN. 24, 1884—10 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

THOMAS LANGHAM, a witness called on behalf of the complainants in rebuttal, and having been first duly sworn by Leslie Stokes, Esq., a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, testifies as follows in answer to questions of complainants' counsel:

125 My name is Thomas Langham; age, 51 years; reside at 2606 Masher street, Philadelphia; occupation, having been foreman on knit fabrics for different manufacturers; I have been in the knitting business since I was five years of age, in England and this country; I came to this country in 1857; I have been a practical knitter all this time; at present I am working at home, and to-morrow expect to be employed at Charley Wiley's, on Lehigh avenue; I have been employed by Thomas Dolan from 1860, I believe, up to 1876; I first helped to build machinery for Dolan, then took charge of them; it was knitting machinery; then took charge of running the machines in the hosiery department; next took charge of the double-rib room.

Q. 1. When did you take charge of the double-rib room, as far as you remember?

A. I cannot answer that question.

Q. 2. Was it before 1870?

(Objected to as leading; also that the witness has fully answered the question.)

A. Yes; to the best of my knowledge.

Q. 3. Do you know George Mouseley?

A. Yes.

Q. 4. Had he ever charge of the double-rib room of Dolan's?

(Objected to as leading.)

A. Yes.

Q. 5. And for what time, as far as you know?

A. Up to the date that I walked in.

Q. 6. In what capacity did you walk into the double-rib room?

A. To take his position.

Q. 7. In what rooms of the factory were you employed before you took charge of the double-rib room?

(Objected to, as the witness has fully answered the question.)

A. In the basement and the top story.

Q. 8. What machines were in the basement, if any?

126 A. Circular knitting machines.

Q. 9. What was done in the top story?

A. Circular knitting machines.

Q. 10. When did you take charge of those circular knitting machines in the basement?

A. I guess it was somewhere about 1863.

Q. 11. When did you take charge of the circular knitting machines in the top story?

A. About, as near as I can guess—about 1865.

Q. 12. Were you foreman in those two departments?

(Objected to as leading, and also that the question has been fully answered.)

A. Yes.

Q. 13. Had you occasion to go to the ware-room; and, if so, how frequently?

(Objected to as leading.)

A. It is a hard question to answer, because there were two ware-rooms.

Q. 14. What was kept in the two ware-rooms; were there different styles of goods kept in them?

(Objected to as leading, and also that the witness has never stated that he had any knowledge of the ware-rooms beyond the fact that there were two.)

A. Yes.

Q. 15. Where were they located?

A. Sometimes in one part of the mill and sometimes in another.

Q. 16. What was kept in the ware-rooms?

(Objected to, as the witness has fully answered that question.)

A. Hosiery in one, fancy knit fabrics in the other.

Q. 17. Had you occasion to go to the ware-room where the fancy knit fabrics were kept; and, if so, how frequently?

127 A. Sometimes once a week, sometimes a dozen times a day, if they made bad work a dozen times a day. I was responsible for the work.

Q. 18. Were you thus frequently in the ware-room where the fancy knit goods were kept during the years 1866–1870, including the last year?

(Objected to as leading; also that the witness has fully answered the question.)

A. Yes, sir.

Q. 19. Please examine the fabric marked "Ex. Dolan No. 3" in book marked "Samples to 1869, Thomas Dolan," and state whether you understand its construction.

A. Yes, sir.

Q. 20. Was any fabric of the construction of the piece marked "Ex. Dolan No. 3" ever made in the double-rib room during the time when you had charge of it?

(Objected to as leading.)

A. No.

Q. 21. Did you ever see any fabric of the construction of "Exhibit Dolan No. 3" made in Thomas Dolan's factory at the time when you were employed there?

A. No.

Q. 22. Did you ever see any fabric of the construction of "Exhibit Dolan No. 3" at Thomas Dolan's factory, either in the ware-room or in any other parts of the factory?

A. No.

Q. 23. Had you occasion to go to the warp-loom shop in that factory?

(Objected to, as it has never been proved that there was a warp-loom shop attached to Dolan's factory.)

A. No; not before taking charge of it?

Q. 24. Do you believe that fabric of the construction of "Exhibit Dolan No. 3" could have been made at Thomas Dolan's factory
128 for several years, between the years 1866 and 1870, one loom running steadily on, and sometimes two or three, without your seeing that fabric or knowing of its existence?

(Objected to as leading.)

A. It might be, but I don't think it could.

Q. 25. Could fabric of the construction of "Exhibit Dolan No. 3" have been made there in considerable quantities, gone to the ware-room, and there been cut up and used for different articles during any two of the years between 1866 and 1870 without your being aware of it?

(Same objection.)

A. I don't think it could.

Q. 26. Did you ever design any samples or patterns yourself?

A. That was part of my occupation.

Q. 27. Were you interested in the new patterns which were designed or made at Dolan's or not?

A. Only in the way of salary.

Q. 28. When did you first see any goods of the construction of "Exhibit Dolan No. 3?"

A. I can't give you the dates when the young man from Mr. Jennings' first showed it to me in my house.

Q. 29. About what time was that?

A. I should say from 9 to 12 months ago.

Q. 30. Do you remember whether they called any fabric at Thomas Dolan's factory "seaweed?"

(Objected to as leading.)

A. Not to my knowledge.

Q. 31. Had Thomas Dolan any double-ribbed hand frames in his factory after 1865?

(Objected to as leading.)

A. That is something I don't understand, double-ribbed hand frames, without you throwed the belt off and turned by hand.

129 Q. 32. Were there any other machines used in Thomas Dolan's factory to make fancy knit goods besides warp looms and circular knitting machines?

A. Yes.

Q. 33. What other machines?

A. Hand frames.

Q. 34. When were they used?

A. They were used when I went there, in 1860 or '61.

Q. 35. And how long?

A. I don't think there was any used after 1865.

Q. 36. Could fabric of the construction of "Exhibit Dolan No. 3" be made on a hand frame?

(Objected to as grossly leading.)

A. The hand frames that I have mentioned? No.

Direct closed.

Cross-examined by Mr. HARDING:

Cross-Q. 37. Was there only one double-rib room at Thomas Dolan's?

A. One what they called the double-rib room. There was one machine put in my basement because they had not room for it in the double-rib room.

Cross-Q. 38. When did you take charge of the warp-loom shop in Mr. Dolan's factory?

A. That I can't give you—dates.

Cross-Q. 39. When did you take charge of the double-rib machines?

A. That I cannot give you—date; not at present. I can get them for you.

Cross-Q. 40. You are familiar with all the knitted goods of various styles made since 1869 at Thomas Dolan's factory, are you not?

A. I believe I am; of any quantity. There was a little sample loom, with a design, was boxed up. What he made I do not know.

Cross-Q. 41. How long did you have charge of the double-rib machine?

130 A. I left it in 1876.

Cross-Q. 42. How long had you charge of the warp machine?

A. I left that in 1876; over two years; I can't tell.

Cross-Q. 43. About what year did you take charge of the double-rib machines?

A. I don't know.

Cross-Q. 44. About what year did you take charge of the warp machines?

A. I will find out for you; I cannot tell now.

Cross-Q. 45. How many machines did Thomas Dolan have in the warp-machine room while you were there?

A. About 12; it might have been more or less—as near as I can guess at it.

Cross-Q. 46. How many in the double-rib-machine room?

A. 14. I believe, besides the sample loom.

Cross-Q. 47. Did they always have 14 there?

A. There was no changes made in that room while I was there, as far as ribs were concerned.

Cross-Q. 48. Could there have been 15?

A. As near as I can think, 14.

Cross-Q. 49. Question repeated.

A. I said, to the best of my belief, 14, beside the sample loom; you can call that sample loom a rib.

Cross-Q. 50. Are you certain that there might not have been 13, not including the sample loom?

A. To the best of my memory, 14.

Cross-Q. 51. When did you come to this country?

A. In 1857.

Cross-Q. 52. How many men were employed in the double-rib room when you had charge?

A. About 4 or 5.

Cross-Q. 53. Then there were only 4 men employed in the double-rib room all the while you were in charge?

(Objected to as a false conclusion from the foregoing question and answer and trying to mislead the witness.)

A. 4 or 5, I said.

Cross-Q. 54. Were there girls in that room in 1869; if so, how many?

131 A. There was girls in the room—sufficient to fill up the rest of the machines.

Cross-Q. 55. How many girls?

A. To the best of my knowledge, judgment, and memory eight or ten.

Cross-Q. 56. How many men were employed in the warp-machine room when you had charge?

A. One when I first went in.

Cross-Q. 57. When did you go in?

A. I'll get you the dates if it is necessary.

Cross-Q. 58. Did you have charge of both the double-rib-machine room and the warp-machine room at the same time?

A. I had charge of the double ribs and warp machines at the same time.

Cross-Q. 59. Were they both in the same room?
A. No.

(Recess until 1.30.)

Cross-Q. 60. How far apart were the rooms?
A. About six or seven feet.
Cross-Q. 61. Were you not in charge of the machinery?
A. Yes; at one time.
Cross-Q. 62. When was that?
A. Up to 1876; I don't know from when.
Cross-Q. 63. Was it from prior to 1870?
A. Yes.
Cross-Q. 64. Was there anybody else in the rooms besides the working force and yourself?
A. Yes.
Cross-Q. 65. Who?
A. Mr. Dolan, Mr. Salmon, Truitt, and the salesmen he would feel like bringing in at any time.
Cross-Q. 66. I mean continuously.
A. Not all the time; no.
Cross-Q. 67. In the warp-machine room were the number of machines never changed?
A. Changing all the time.
Cross-Q. 68. How many were there in 1870?
A. I never said I was there in 1870.
132 Cross-Q. 69. When were you there?
A. I don't know when I went in.
Cross-Q. 70. How many were there in 1871?
A. I never said I was there in 1871.
Cross-Q. 71. How many were there in 1872?
A. I never said I was in the room in 1872.
Cross-Q. 71½. How many were there in 1873?
A. Same answer.
Cross-Q. 72. How many in 1874?
A. Same answer.
Cross-Q. 73. How many in 1875?
A. Very few.
Cross-Q. 74. How many?
A. I can't tell.
Cross-Q. 75. Then you were not in that room prior to 1875, were you?
A. I never said I was not.
Cross-Q. 76. About what year were you there first?
A. Hard to tell. If you want to know particularly I can find out.
Cross-Q. 77. Is your memory on this point as good as it is on the others?

(Objected to as too general, incomprehensible, and irrelevant.)

A. I don't understand the points.

Cross-Q. 78. What I want to know is why you cannot remember when you were in the warp-machine room.

A. Well, I suppose my memory is bad on that, and it's no use guessing when I can get dates for it if necessary.

Cross-Q. 79. How many machines were there in the double-rib room in 1870?

A. I don't think I said I was there in 1870.

Cross-Q. 80. Same question repeated.

A. If I was in the room in 1870 I know how many there was, but if I didn't go into the room until 1871 I don't know.

Cross-Q. 81. Same question repeated.

A. If I was there in 1870 I know; if I was not there I don't know.

Cross-Q. 82. Same question repeated.

133 A. If I was there in 1870, fourteen besides the *same* loom.

Cross-Q. 83. Were you there in 1870?

A. Well, I believe I was, but I am not positive, but I can find out.

Cross-Q. 84. How many machines were there in 1871?

A. Fourteen and the sample loom, to the best of my remembrance.

Cross-Q. 85. Are you positive that there were not fifteen and the sample loom?

A. Fourteen and the sample loom, to the best of my remembrance.

Cross-Q. 86. Question repeated.

A. To the best of my knowledge, fourteen and the sample loom.

Cross-Q. 87. Question repeated.

A. To the best of my knowledge, fourteen and the sample loom what was in that room.

Cross-Q. 88. I want you to take a piece of paper and figure on it and then let me know if you can't answer whether you are positive that there were not fifteen and a sample loom.

A. I shall answer that question in no other way but what I have previously answered it.

Cross-Q. 89. When did you first see a fabric constructed as follows: "The reticulated lace purling composed of pillars, each pillar consisting of laterally projecting loops and of two or more continuous rows of meshes, whereby the loop sare held flat?"

(Objected to, because the witness has not testified in his direct examination whether he has ever seen the fabric described by counsel, but has testified only to such fabric as it is joined together as appears from "Exhibit Dolan No. 3.")

A. Show me the fabric and I will answer the question.

Cross-Q. 90. When did you first see a fabric such as is described in my last question when it is joined together in any manner?

(Objected to as not specifying in what way the fabric is joined together, and therefore not referring to the fabric with reference to which the witness has testified.)

134 A. I'll answer no questions about fabrics without I see them; that's positive.

Cross-Q. 91. When did you first see a fabric similar to "Exhibit Dolan No. 3?"

A. Well, to the best of my memory, somewhere pretty close on to a year ago.

Cross-Q. 92. You are willing to swear that you never saw fabric constructed like that prior to twelve months ago?

A. I won't swear to that, but it is somewhere close on to a year ago.

Cross-Q. 93. Look closely at the stitch and general arrangement of "Exhibit Dolan No. 3," and tell me was it two years ago since you first saw a similar construction and stitch.

A. No, sir.

Cross-Q. 94. Describe the construction of "Exhibit Dolan No. 3?"

A. The fabric describes itself; it is by pillars and inlaid threads, the terms we use.

Cross-Q. 95. Are you willing to swear that fabric similar to "Exhibit Dolan No. 3" was not made in Thomas Dolan's factory prior to 1876?

(Objected to as requiring the witness to swear to a fact which cannot possibly be within his knowledge, he not having testified that he was employed in that factory, or in the factory as long as Thomas Dolan's factory existed before 1876.)

(Question withdrawn.)

Cross-Q. 96. Can you swear that fabric similar to "Exhibit Dolan No. 3" was not made in Thomas Dolan's factory in the year 1870?

A. I can swear that if it was made I never saw it.

Cross-Q. 97. Question repeated.

A. I don't swear to what other people was doing; I swear I never saw it.

Cross-Q. 98. Question repeated.

A. I won't swear to anything of that kind.

Cross-Q. 99. How about 1871?

135 A. I say as long as I was in Thomas Dolan's employment I never saw the fabric made, but, as to swearing, I swear to nothing, only what I see done myself or did myself.

Cross-Q. 100. Then, as a fact, you don't know whether it was made or not, do you?

A. I never saw the fabric or saw it made. I won't swear it was never made there.

Cross-Q. 101. Are there not quite a number of fabrics made at Thomas Dolan's on warp and rib looms while you were there which might have been made without you knowing of it?

A. Not one when I was taking charge of them rooms, but before I took charge I don't know what they made.

Cross-Q. 102. Then you can tell positively by looking at any fabric to-day whether it was made on the warp and rib looms of Thomas Dolan when you were in those rooms?

(Objected to if the question is meant to be a conclusion from the former question and answer, it being a false conclusion therefrom.)

A. No; I won't swear to that. There are some peculiar fabrics I can remember and some I can't.

Cross-Q. 103. Then you are likely to forget quite a number of fabrics which were made at that time on those looms, are you not?

A. I don't know as I have forgotten one; never said I had, but might have made a pattern myself and forgotten. There was many I made was thrown in the waste-basket.

Cross-Q. 104. I am talking of those that were manufactured for the double rib and warp looms. Can you remember every one of those?

A. I believe I can.

Cross-Q. 105. How many new patterns were made in 1870?

A. I don't know as there was any.

Cross-Q. 106. How many different styles were you running on?

A. I don't know.

Cross-Q. 107. How many different patterns were you running on?

A. I don't know.

Cross-Q. 108. How many differentcsfabri were made in 1870?

136 A. I don't know.

Cross-Q. 109. Can you answer those last questions in reference to the years 1871, '72, '73, '74, '75—to any or all?

A. No; nor Mr. Dolan himself can't answer without looking his books over.

Cross-Q. 110. Look at this book marked "Samples to 1869, Thomas Dolan," and tell me how many on the first page you can swear or are positive were or were not made at Thomas Dolan's.

A. I won't swear to anything. I could tell better by taking the fabrics off and examining them, as long as they are pasted in the book.

— Q. 111. How long will it take you to examine any single sample to be able to swear that it had or had not been made on a double rib or warp-loom machine in Thomas Dolan's factory while you were there?

A. Some of them five seconds; others are so close to patterns I have made before that being away five or six years I would not like to swear.

Cross-Q. 112. Take the book and look through it carefully and then tell me how many of those samples are exactly like goods manufactured at Thomas Dolan's on the double rib and warp looms while you were there.

A. I will not answer that question with the "exactly."

Cross-Q. 113. Mr. Boot was the designer, was he not, at Thomas Dolan's?

A. That's what he was paid for.

Cross-Q. 114. Question repeated.

A. He was not the only designer; there was others beside him, but he was paid for designing.

Cross-Q. 115. Designing was his only occupation there, was it not?

A. He had charge of the warp room before I came into it.
Cross-Q. 116. When did you come into the warp room?
A. I don't know.
Cross-Q. 117. Then you don't remember that you made an affidavit in 1881 in which you swore that you took charge of the double-rib machine in 1869?
A. The affidavit as I made it. There was parties there who told me the time that I went in that room.
137 Cross-Q. 118. Did you ever swear in 1881 that you carefully examined the sample marked "Exhibit Dolan No. 3?"
A. In either 1881 or 1882 I did.
Cross-Q. 119. What part of the year?
A. I don't know.
Cross-Q. 120. Was it the early part of the year?
A. I don't know.
Cross-Q. 121. Was it in December?
A. I don't know.
Cross-Q. 122. Couldn't it have been in 1880?
A. I know it was not.
Cross-Q. 123. How many affidavits have you ever made in your life?

(Objected to as immaterial.)

A. One.
Cross-Q. 124. Did you make that affidavit in New York?
A. Yes.
Cross-Q. 125. Where did you make this affidavit in New York?
A. Somewhere on Broadway.
Cross-Q. 126. Then you can't remember the season of the year?
A. I know I wore my overcoat.
Cross-Q. 127. Take that book and tell me if any such fabrics have or have not been made at Thomas Dolan's, as the samples are set out there, while you were there.
A. Yes.
Cross-Q. 128. Point out which were and which were not while you were in charge of the rooms.

(Objected to, as the witness has already stated that he cannot examine and intelligently describe the samples without taking them out of the book and examining their backs.)
(The examiner is requested to certify that the witness has not taken "Exhibit Dolan No. 3" out of the book. The examiner does so certify.)
(Question withdrawn.)

138 Cross-Q. 129. Examine as carefully as you can every sample in that book, in its order, and state at each one, in its order, whether it was or was not made on the double rib or warp looms of Thomas Dolan & Co. while you were in charge of those rooms.

(Objected to as improper, because the book on its face shows that the samples contained therein were made prior to the year 1869 and

the witness has testified that he did not know whether he had charge of the double rib or warp room until later.)

(Question withdrawn.)

Cross-Q. 130. Examine as carefully as you can each and every fabric in their order in that book marked "Samples to 1869, Thomas Dolan," and state whether or not such fabrics were made at Thomas Dolan's while you were in charge of the double rib or warp room. I desire the witness to commence at the beginning and point out each one, stating whether or no the fabric was made as above stated.

A. I will not answer that question, for the reason that there are a lot of these fabrics might have been made on Boot's sample loom, but anything that is run steady on the machines I could pick out.

Cross-Q. 131. Can you swear to-day when you see any fabric that it was or was not made on looms of which you had charge when you were at Thomas Dolan's? I mean either such fabrics or fabrics exactly like them.

A. The exactly I will not answer. I think I could if that loom was under my charge and run for a week.

Cross-Q. 132. Then why can't you answer my question 130.

(Objected to, for the reason that the witness has answered the question and has given the reason why he was unable to answer it otherwise.)

A. I don't know as any of them was made there.

(Complainants' counsel requests the examiner to certify that the witness answers the last question without examining the book. The examiner does so certify.)

139 Cross-Q. 133. Question repeated, and counsel states that when he uses the word made in reference to the looms the sample loom of Mr. Boot is excepted in Cross-Q. No. 130.

A. I won't swear to anything of the kind, for the reason I don't know that any of those samples were made at Thomas Dolan's.

(On request of complainants' counsel the examiner certifies that the witness answers the last question without examining the book.)

Cross-Q. 134. You don't know every design that Mr. Boot made on his sample loom, do you?

A. I do not.

Cross-Q. 135. Might not this fabric "Exhibit Dolan No. 3" have been made at Thomas Dolan's factory without your knowing it, not including Mr. Boot's sample loom?

A. Yes; before I had taken charge of the rooms.

Cross-Q. 136. How was it afterwards?

A. No.

Cross-Q. 137. Could any fabric be made there without your knowing it after you took charge?

A. No; barring the sample loom.

Cross-Q. 138. And you would be able to recognize any fabric to-day

that had been made on Thomas Dolan's looms while you were in charge?

A. If the loom was running any length of time on that fabric I believe I could pretty close, as there might be fabrics come so close, as it is 7 or 8 years ago, that of course I might make a few errors.

Cross-Q. 139. And yet you refuse to look through this book and tell me which were and which were not made on Thomas Dolan's looms while you were in charge, excepting the sample room?

(Objected to for the reason that the witness has already stated that he cannot examine and intelligently describe the samples contained in that book without looking at their backs.)

Counsel for complainant denies that the witness ever stated that he could tell the samples if he saw the backs; but the coun-
140 sel has no objection to the witness raising the samples sufficiently to see the backs.

A. I do, for this reason, that I cannot tell which were made before I was there. I can show you half a dozen.

Adjourned until further notice.

TUESDAY, *January* 29, 1884—12 o'clock.

Met, pursuant to notice hereto annexed, at the office of Conyers Button, Germantown, Pennsylvania.

Present: Antonio Knauth, Esq., counsel for complainants; George J. Harding, Esq., counsel for defendants; Samuel R. Betts, Esq., special examiner, and the witness, THOMAS LANGHAM, produced for further cross-examination.

Cross-examination continued by Mr. HARDING:

Cross-Q. 140. What year did you take charge of the double-rib looms at Mr. Dolan's factory and what year did you take charge of the warp looms?

A. I do not know, but if it is necessary and you want me to find out I will try and find out.

Cross-Q. 141. Then you don't know any better now than at the last meeting?

A. No.

Witness is now shown a book containing a large number of pieces of fabric.

Cross-Q. 142. Please examine carefully the pieces of fabric in that book and state in order whether each was or was not made or
141 fabrics identical with them on the looms of which you had charge when you had charge of them at Thomas Dolan's.

(Objected to as immaterial and improper, it not appearing what book is presented to the witness or what it contains.)

A. No; I will not answer the question, for reasons that I cannot state positively, as they might have been made in Canada, for what I know.

At the request of counsel for defendants the examiner certifies that

the book referred to is marked on the cover "Samples, 1868, 1869," and on the back "Samples, 1869, 1870," and also that it is one of the sample books referred to by Mr. Conyers Button in his evidence as having been obtained from Thomas Dolan & Co. with and at the time he purchased the machinery, &c., from said Thomas Dolan & Co., as he testified.

Cross-Q. 143. Will the witness make the same answer in reference to the six books now shown him, each containing a large number of pieces of knitted fabric?

A. Yes; if the question is put the same way.

It is stipulated by counsel that the books referred to by the witness in his last two answers are all the books produced by Conyers Button or at his examination by the complainant in rebuttal in this case.

Cross-Q. 144. Do you still swear that you are familiar to-day with all the fabrics made on the warp or double-rib looms at Thomas Dolan's factory while you were in charge of those looms?

A. I am familiar with the fabrics that I made, if there was any quantity of them made, but I have made many a fabric myself that was chucked into the waste-basket, and perhaps I would not recognize, as most of the designs was got out by myself, not by Boot, the designer.

(Answer objected to as irresponsive and question repeated.)

142 Cross-Q. 145. Question repeated.

A. Same answer.

Cross-Q. 146. Same objection and question repeated.

A. Same answer.

(Same objection to answer.)

Cross-Q. 147. Then I understand you to refuse to answer my question as I put it?

A. Yes, because I consider that question as unanswerable.

Cross-Q. 148. Why?

A. For this reason, that you might swear me on a bit of yarn they've got there. If I saw it I could not swear that it was the same yarn even that I saw there.

Cross-Q. 149. Do you still swear that you are familiar to-day with all the fabrics made on the warp and double-rib looms at Thomas Dolan & Co.'s when you were in charge of said looms, said fabrics to have been worked on said looms for at least two weeks or longer, bearing in mind that I do not refer to the grade or quality of the yarn, but to the fabric in its entirety?

A. I believe that if a loom has been running two weeks regular on a certain fabric that I would recognize the pattern.

Cross-Q. 150. Now, referring to the eight books referred to in this testimony, please look through them carefully, taking as long as you like, commencing with the book containing "Exhibit Dolan No. 2," looking at each piece of fabric separately, and swear whether each one in order was or was not made for two weeks at Thomas Dolan's

factory on the looms of which you had charge when you had charge of said looms.

A. I will not answer that question.

(Cross-examination closed.)

Redirect by Mr. KNAUTH:

Redirect Q. 152. Have you a good or a bad memory on dates?

(Objected to, as witness had a chance to answer that question and refused to do so on cross-examination, and the attempt of counsel for complainant to lead the witness is entirely out of order.)

143 A. I believe the worst in the world on dates, without there is something like the Centennial year.

Redirect Q. 153. Have you a good memory on other points?

(Objected to as leading.)

A. On machinery or fabrics I have.

Redirect Q. 154. Are you positive that you took charge of the double-rib room when George Mouseley left it?

(Objected to as grossly leading and not matter for redirect examination.)

A. It was put in my charge before George Mouseley left it, or rather I was sent up about one hour before stopping time, before Mouseley left.

Redirect Q. 155. Do you remember when you made the affidavit to which you have testified on your cross-examination?

(Objected to as fully answered.)

A. No.

Redirect Q. 156. Do you remember whether you made it more than four years ago?

(Objected to as leading.)

A. I never made an affidavit four years ago.

Redirect Q. 157. And within the four years just past, you do not remember when you made the affidavit?

(Objected to, as the question has been fully answered more than once, and this attempt to lead the witness into making answers which the counsel for the complainant put in his mouth is entirely out of order and inadmissible.)

A. I do not.

Redirect Q. 158. Did you examine the sample marked "Exhibit Dolan No. 3," in the sample book marked "Samples to 1869, Thomas Dolan," before you made that affidavit?

144 A. I saw a fabric similar to that.

Redirect Q. 159. Was it a fabric of the same construction?

(Objected to as leading.)

A. Well, I should say the principle was about the same.

Redirect Q. 160. I read to you Q. 92 and your answer thereto, and

ask you whether you are sure as to the time stated therein or whether you may have been mistaken in your answer.

(Objected to as grossly leading, and the attempt to lead the witness into making answers which the counsel for the complainants puts into his mouth is entirely out of order and inadmissible.)

A. I don't know what time; it was guess-work.

Redirect Q. 161. I read to you now Q. 93 and your answer thereto, and ask you whether you are sure as to the time stated therein or whether you may have been mistaken in your answer.

(Same objection and statement as above.)

A. I might have been mistaken. It don't seem to me it was two years ago. I did not feel interested in the affair, and I didn't take no notice.

Redirect Q. 162. Now, please look at the sample book containing "Exhibit Dolan No. 3" and state whether you can see the backs of the different samples pasted in.

A. Some I can, some I cannot.

Redirect Q. 163. Please tell of how many of these samples in this book you can see the backs. I refer only to the first two pages.

(Objected to as calling for a mere opinion from the witness, and the book and samples will show clearly whether the backs can be seen and how many.)

A. I can see 14 on the first page out of 21, 9 on the second page out of 15.

145 Redirect Q. 164. Can you examine the back of "Exhibit Dolan No. 3?"

A. Yes.

Redirect Q. 165. Can you examine the samples contained in this book so as to intelligently describe their construction without looking at their backs?

(Same objection as to Q. 160.)

A. Some I can, some I cannot.

Redirect Q. 166. I now show you a book marked on its face "Samples, 1871, Thomas Dolan," and on its back "Samples to 1869, Thomas Dolan." Can you point out any samples therein which have been made or of the construction of which fabric has been made at Thomas Dolan's factory while you were there?

(Objected to, as the witness has had several chances to answer said question and has always refused to do it.)

A. I won't swear them patterns were made at Thomas Dolan's. I cannot swear where those patterns was made. I had no control over the patterns like those in this book. It is a weave loom as far as I have got. Now we come to the warp. There's the whole fabric, but the coloring's different.

Redirect Q. 167. How long would it take you to examine the eight books now lying before you so as to tell at the end of your examina-

tion which samples were made at Dolan's factory while you were in charge of any of the looms?

(Objected to, as the witness has had three or four different chances to look through the books and state which were and which were not made at Thomas Dolan's on looms when he was in charge, and has each time stated that even if he looked carefully through he would not be able to answer it.)

A. I would not take less than 24 hours for each book, and then I would want the privilege of unraveling the threads, and then I might make a mistake or two.

Redirect Q. 168. Is there anything peculiar in the appear-
146 ance of the piece "Exhibit Dolan No. 3" that would distinguish it from the other patterns?

(Same objection as to Q. 160.)

A. Oh, there's a great deal of difference in the appearance.

Redirect Q. 169. Can you tell what distinguishes it in appearance from the other patterns? Look at the sample in question.

A. About the same as one man's handwriting varies from another.

Redirect Q. 170. Did the number of men in the warp-loom room constantly change while you were in charge of it?

(Objected to as leading.)

A. No; but the girls did.

Redirect Q. 171. Had you charge of part of the machinery at Thomas Dolan's from prior to 1870?

(Same objection as to Q. 160.)

A. Yes; certain parts.

Redirect Q. 172. Do you remember whether you went into the warp-machine room as foreman in 1874 or after that year?

(Same objection.)

A. Before 1874.

Redirect closed.

Recross by Mr. HARDING:

Recross-Q. 173. Do you know what Mr. Boot made on his sample loom?

A. No.

Recross-Q. 174. Where do you swear you first saw "Exhibit Dolan No. 3?"

A. Well, it's over a year ago, in my house, in 1129 Germantown road, a gentleman who was a stranger to me showed it to me. I do not know now who he was. I have since heard he came from Jennings.

147 Recross-Q. 175. When did you first see "Exhibit Dolan No. 3" pasted in a book (showing witness book marked "Samples to 1869, Thomas Dolan")?

A. I believe on last Thursday.

Recross-Q. 176. Then before you were examined in this case you believe you never saw this sample "Exhibit Dolan No. 3?"

A. That particular piece I don't know as I ever saw before Thursday. I put the proviso to it for that reason.

Recross-Q. 177. Then prior to this case the only similar piece to "Exhibit Dolan No. 3" you ever saw was the one the young man that you have since heard come from Mr. Jennings showed you at 1129 Germantown road?

A. Yes; that was the first piece I saw, to the best of my knowledge.

Recross-Q. 178. Have you seen any fabric similar to "Exhibit Dolan No. 3," except what you have seen in Philadelphia, as shown to you by said young man or by the counsel for complainant?

(Objected to as not proper subject for cross-examination.)

A. I saw fabrics similar to that in New York.

Recross-Q. 179. Where?

A. Broadway; I can't tell where.

Recross closed.

Re-redirect examination:

Re-redirect Q. 180. Do you remember whether that was at the time when you made an affidavit, as you have testified?

(Same objection as to question 160.)

A. That's the time.

Re-redirect Q. 181. Do you remember whether the piece before you, marked "Exhibit Dolan No. 3," was then shown to you?

(Objected to as already fully answered.)

148 A. The same design; I won't say the piece.

Re-redirect Q. 182. Was "Exhibit Dolan No. 3," as it is before you, pasted in this book shown to you at your house, at 1129 Germantown road?

A. That piece of fabric was not. I was never shown a white piece

Examination closed.

THOMAS LANGHAM.

Subscribed to before me this 29th day of January, 1884.

SAMUEL R. BETTS,
*United States Comm'r and Special Examiner.*

Adjourned until new notice, owing to complainants' counsel having been called back to New York by telegram.

229 BROADWAY, NEW YORK, *February* 5, 1884—11 a. m.

Met pursuant to notice hereto annexed.

Present: Antonio Knauth, Esq., of counsel for complainants, and George J. Harding, Esq., of counsel for defendants.

DAVID BRIGGS, a witness called in rebuttal on behalf of the complainants, and having been first duly cautioned and sworn, testifies as follows in answer to questions by complainants' counsel:

My name is David Briggs. My age is 51. My residence is 183 Ryerson street, Brooklyn. I am a weaver by occupation, a lace weaver. I have been a weaver for nearly forty years, with the exception of about eight years, when I was keeping a machine shop.

I am a naturalized citizen of this country, and was born in
149 England, and came to this country in 1862. Since that time I have been living continuously in Germantown, Philadelphia, until last July. I have worked for Thomas Dolan, the defendant in this action.

Q. 1. When did you work for him?

A. From October, 1877, till August, 1879, a year or ten months.

Q. 2. In what capacity were you employed by him?

A. In patterning, meshing, and designing styles and fabrics.

Q. 3. In his factory?

A. Yes, sir.

Q. 4. Did you work any looms yourself?

A. Not permanently.

Q. 5. How did you work the patterns or designs?

A. On small patterning machines.

Q. 6. Please look at a piece of fabric before you, marked "Exhibit Dolan No. 3," in book marked "Samples to 1869, Thomas Dolan," and state whether you understand its construction.

A. Yes, sir.

Q. 7. Did you ever make any fabric of this construction, or of a similar construction; and, if so, when?

A. Yes, sir.

Q. 8. At Thomas Dolan's factory?

A. Yes, sir.

Q. 9. Was it of exactly the same or was it of a similar construction?

(Objected to, as the question has been fully answered, and that counsel for plaintiff has no right to so frame his question that the witness cannot help but answer it from the question, and not from his own knowledge.)

A. If I know anything about fabrics, it is exactly the same; there is no two ways about that—made with a single pillar and joined, of course, it can't be done any other way.

Q. 10. Did you make it with a double pillar at Dolan's factory?

(Objected to, as the question has been fully answered—witness stated that he did.)

A. No, sir.

150 Q. 11. When did you first make it with a single pillar at Dolan's factory?

A. It was about the latter end of June or the first of July, 1879.

Q. 12. State in detail the circumstances attending the first occa-

sion when you made the single-pillar fabric at Thomas Dolan's factory.

A. Cornelius Jackson brought a nubia up to me at the machine, and said, "Make that." I remarked to him that I had heard that a man in New York claimed a patent on that. I don't remember distinctly the words after that, but I went to work and copied it.

Q. 13. Can you say positively whether before this last-mentioned incident there was ever any such fabric made at Thomas Dolan's factory while you were there, either with a single or with a double pillar?

A. Not while I was there.

Q. 14. Was the nubia which you said Jackson brought up to you made at Thomas Dolan's factory while you were there?

A. No, sir.

Q. 15. What was its color?

A. To my recollection it was a dark blue.

Q. 16. Did Jackson at that time claim that the nubia shown to you for reproduction was made at Thomas Dolan's factory?

(Objected to as leading.)

A. No, sir.

Q. 17. Do you remember the substance of the conversation which you had with Jackson after he told you "make that," handing you the nubia, without giving the precise words?

A. Well, it was about to this effect, that it was questionable whether a man could really claim a patent on it, I not knowing that the claim was on the fringe.

Q. 18. Was there a fringe on the nubia which Jackson showed you then?

A. Yes.

Q. 19. What was the construction of that fringe?

A. It was a combination of the chain and purl, but not joined.

Q. 20. Had you ever seen that fringe before on fabrics of a like or similar character?

151 A. No, sir.

Q. 21. Can you state positively whether at the time when you were at Thomas Dolan's factory any fringes of that construction were made there?

A. There was nothing of the kind made while I was there until that nubia came there.

Q. 22. Did Jackson show you any samples of fabric of the same construction, either with a single or a double pillar, at the time or after the time when he showed you the blue nubia which you have described?

A. No, sir.

Q. 23. Have you been acquainted with the different styles of knit fabric which appear on the market at Philadelphia since 1862?

A. Yes.

Q. 24. Have you ever seen any nubias or other articles made of the construction of "Exhibit Dolan No. 3," a double pillar, having

loops on both sides, the pillars or loops being joined so as to form a net, during the years from 1862 to 1872?

(Objected to, as the witness has stated that he fully understood the construction of Exhibit Dolan No. 3. Therefore the counsel for the complainant has no right to call a fabric constructed in the manner set out in the question Exhibit Dolan No. 3.

A. No, sir.

Q. 25. Could articles of the construction of the double-pillar fabric, Exhibit Dolan No. 3, be sold in the Philadelphia market in considerable quantities during any of the years from 1862–1872 without your seeing them or knowing of their existence?

(Objected to on the ground that the counsel for complainant has called the fabric Exhibit Dolan No 3 double pillar, while the witness calls it single, and the attempt to mislead his own witness into answering as he wishes is entirely out of order.)

A. I believe not.

152 Q. 26. Is the piece before you, marked Exhibit Dolan No. 3, a piece with double pillars or with single pillars?

(Objected to as grossly leading.)

A. It's a double pillar. I didn't see that before. I thought it was a single pillar by looking at the front of it, but on looking through it find it is a double. I was swearing from there being a single pillar. I was wrong.

Q. 27. I read you now questions 6 and 7 and your answers thereto. Please state whether you have to qualify your answers after what you have just stated, and how.

A. Question 6 I qualify by saying that I now understand the construction, but did not then, as I thought it was a single pillar. In answer to question 7, I should now say, "No, sir; I never did."

Q. 28. Was the nubia which Cornelius Jackson brought to you for reproduction a fabric with single pillars or with double pillars?

(Objected to as fully answered.)

A. A single pillar; certain.

Q. 29. I repeat to you now question 24 and question 25. Please state whether, after your more careful examination of "Exhibit Dolan," your answers thereto are the same.

(Objected to, because counsel for complainant has no right to call a fabric constructed in the manner set out in the question "Exhibit Dolan No. 3.")

A. My answers are the same to both.

Q. 30. Who was Cornelius Jackson?

A. A man employed in Thomas Dolan's factory as foreman.

Direct closed.

Cross-examined by Mr. HARDING:

Cross-Q. 31. Where were those pattern machines spoken of in your testimony; in what room?

153 A. It was the room close to the engine-house—not by themselves—filled with warp machines.

Cross-Q. 32. What was your relation to Jackson in Dolan's employ?

A. Assistant.

Cross-Q. 33. Describe briefly the construction of "Exhibit Dolan No. 3."

A. It's a double pillar, joint together by the pillar on one side and the loop on the other; that's my opinion of how that's done, from what I can see of it. I never made any of that.

Cross-Q. 34. In whose employ are you now?

A. Mr. Jennings', the complainant in this case.

Cross-Q. 35. In whose employ were you in 1862?

A. In my own employ. I had a mill of my own.

Cross-Q. 36. Whose employ were you in in 1866?

A. It must have been in Elias Burch. I was working a warp machine.

Cross-Q. 37. Where were you in 1867?

A. I think I had a mill of my own at Germantown?

Cross-Q. 38. In 1868 where were you?

A. At Germantown, possibly with Philip S. Justice. He was a machine-builder.

Cross-Q. 39. Where were you in 1869 and 1870?

A. At the same place.

Cross-Q. 40. Where in 1871?

A. In Germantown, for myself; in the machine business. I remained there until a few months before I went to Thomas Dolan's.

Cross-Q. 41. What kind of machines did you build?

A. Knitting machines, double ribs, &c.

Cross-Q. 42. When you were at Philip S. Justice's what was your position and hours?

A. I was foreman in that department, and worked ten hours a day.

Cross-Q. 43. Do you believe you would know every fabric that was put on the Philadelphia market during the period you were in Mr. Justice's employ?

A. That I could not say certainly, but I believe I should, in that line.

Cross-Q. 44. In what manner would you get this knowledge while you were at Justice's?

154 A. I had frequently to go out on business for the firm, and was interested in the fancy-goods market as a matter of curiosity.

Cross-Q. 45. When you had to go out during the day from Mr. Justice's it was on business connected with hydraulic jacks, springs, &c., was it not?

A. I went to take measurements for iron railing and fixtures for offices.

Cross-Q. 46. It was not connected with knit-goods fabrics, was it?

A. No, sir.

Cross-Q. 47. Then, when you were sent out on this business, you

used to stop and go through the market so carefully that you are able to identify fabrics made during that time?

A. I did not neglect my employer's business, but I had my eyes about me. I was not always at business. I had some leisure time. I was acquainted with Bank-street men in the business.

Cross-Q. 48. Look through this book of samples shown you carefully and state whether or not each and every sample in order was or was not on the market between 1862 and this date, and about what time—I mean a fabric of which each would be a sample.

A. I don't know whether each was or was not. I know some were. I know that some in the book were not on the market. I can recognize most of them.

Cross-Q. 49. Question repeated, with reference to the years 1868 to 1871.

(Objected to as not proper subject for cross-examination, the witness not having testified to any part of the book except "Exhibit Dolan No. 3" on his direct examination.)

Counsel for defendant states that it has not been set out in any of these last questions that this book even contains "Exhibit Dolan No. 3," it being, as far as these questions are concerned, merely a book containing pieces of fabric, which the counsel calls samples.

Complainants' counsel instructs the witness not to answer the question, because the defendant's counsel has no right to
155 cross-examine the witness upon subjects to which he has not been examined directly, and it appears from counsel's own statement that the book shown to the witness is merely a book containing pieces of fabrics, which the counsel calls samples.

A. I decline to answer it, under counsel's advice.

Defendant's counsel calls the attention of the court to the refusal of the witness to answer this question, the witness having, both in his direct and cross examination, stated that he would be able to recognize any fabrics placed on the Philadelphia market between 1862 and this date; also, in his cross-examination, he stated that he would know every fabric put on the Philadelphia market from 1869 to 1871, inclusive. Therefore, if the witness knows every fabric made, those that he don't know could not have been made, and hence the question is a perfectly fair one in that form.

Complainants' counsel objected to the statements of facts above set forth, so far as the direct examination of said witness is concerned, and to the manner of defendant's counsel of spreading matters of argument on the record.

On request of defendant's counsel the examiner certifies that the book referred to in the last questions is marked "Samples to 1869, Thomas Dolan," and contained "Exhibit Dolan No. 3."

Cross-Q. 50. When you were at Thomas Dolan's, employed on the pattern machines, could not fabric similar to "Exhibit Dolan No. 3" have been made at Thomas Dolan's factory without your knowledge?

A. I believe not.

Cross-Q. 51. Why?

A. Because they would have to go in the middle of the night and work all night and clear it away before I got there in the morning.

Cross-Q. 52. Were you in the double-rib room—employed there—and do you know every fabric that was made in that room while you were in Thomas Dolan's factory?

A. I was employed there some time, and I believe I saw all the fabrics that was made. I had to go into that room occasionally for attachments to pattern chains.

156 Cross-Q. 53. What did you do in the double-rib room, and during what period were you there, and how many machines were there in the room while you were there?

A. I assisted in starting the looms. I was there from 1877 to 1879, off and on; it was only occasionally I had to go there for a day or two, as my patterning looms were in the other room; about 16 machines, I think.

Cross-Q. 54. Then between 1877 and 1879 no fabric could be made on the double-rib or warp loom without your knowing the fabric. Is that so?

A. I believe so.

Cross-Q. 55. Look through this book which I now show you and state, in order, whether each was or was not made on a warp or double-rib loom between the years 1877 and 1879. I refer to a book containing pieces of fabric, and I am speaking about the fabrics of which they would be samples, and I refer to the warp and double-rib looms at Thomas Dolan's.

(Objected to as improper subject for cross-examination, the witness not having testified to any samples except "Exhibit Dolan No. 3" on his direct examination, and as irrelevant, it not appearing that any of the samples contained in the book shown to the witness were made at Thomas Dolan's factory while he was there.)

A. It can't be answered. If you get the book of samples that were made in those years I could answer what was made into goods while I was there and what was not.

Counsel for defendant requests counsel for complainant to produce the witness at Conyers Buttons', Germantown, for further examination in reference to certain books there, referred to in Conyers Buttons' testimony, or else to produce the books in New York so that the witness may be further examined on them.

Complainants' counsel refuses to comply with the request of defendants' counsel, as the witness is now here and can be cross-examined with respect to all matters to which he has been examined directly. Any cross-examination with respect to Conyers Buttons' books would be immaterial and improper.

157 Cross-Q. 56. Do you know what that book of samples now before you is?

A. Yes; from 1867; it's marked 1867.

Cross-Q. 57. Do you know whose it is, or rather what firm it purports to contain the samples of?

(Objected to as irrelevant.)

A. I don't know whose it is now. I think Thomas Dolan sold it to Conyers Buttons; supposed to be—yes; Dolan's.

Cross-Q. 58. Previous to your answer to cross-question 55 did you look at the back of the book, and what did you see?

(Same objection.)

A. I attempted to look at the back of the book, but was interrupted by defendants' counsel, but did see what was on it. I saw the year.

Cross-Q. 59. What was the year you saw?

(Same objection.)

A. 1867.

Cross-Q. 60. Then, prior to looking on the back of that book, you knew the book purported to contain samples of Thomas Dolan's, but did not know the year. Is that so?

(Objected to as irrelevant and as incompetent on cross-examination.)

A. I knew the book had the appearance of the books that Thomas Dolan kept his samples in. I did not know the year.

At request of defendants' counsel the commissioner certifies that the book referred to is the same certified to before by him during this examination.

Recess to 3 p. m.

158 Met after recess.

Present: Counsel as before.

Counsel for defendants again makes the demand that the counsel for complainants present the witness for further cross-examination at Conyers Button's, Germantown, on certain books introduced into this case, or requests the counsel for complainants to produce said books at any convenient place for further cross-examination.

Same refusal as before by complainants' counsel.

Cross-examination closed, subject to any action on said refusal of counsel for complainants.

Redirect by Mr. KNAUTH:

Redirect Q. 61. Did you work in different rooms at Thomas Dolan's factory at the same time—I mean on the same days?

(Objected to as leading and also as already fully answered.)

A. Yes; on the same days sometimes.

Redirect Q. 62. How frequently did you go to the double-rib loom?

A. Sometimes four times a day; sometimes more; sometimes there was a day or two between.

Redirect Q. 63. Were you there on every working day?

A. No, sir.

Redirect Q. 64. Were you there every other day or about every other day?

(Objected to as leading.)

A. About every other day.

Redirect Q. 65. Where did you first see any nubias or any fabric of the construction of Exhibit Dolan No. 3?

A. I never saw them at all, double pillar. The one that I saw in Jennings' office a few months ago was the first I ever saw.

159 Redirect Q. 66. Is there anything peculiar in the appearance of that fabric that would fasten it on your mind if once seen?

(Objected to, as the witness is incapable of answering such a question, said witness having been unable even after examining the fabric to state what it was, and only after being corrected by his counsel and in his further testimony did so.)

A. Yes; the double pillar would make it lie flatter than the single pillar would.

Redirect closed.

Examination closed.

DAVID BRIGGS.

Subscribed and sworn to before me this 5th day of February, 1884.

SAMUEL R. BETTS,
*United States Commissioner, Southern District of New York.*

Adjourned to 11 a. m., February 6, 1884.

NEW YORK, *February* 6, 1884—11 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

GEORGE A. HENHOEFFER, a witness called on behalf of the complainants in rebuttal, *and* having been first duly cautioned and sworn, deposes as follows, in answer to questions by complainants' counsel:

My name is George A. Henhoeffer; age, 44 years; reside at 1131 Hanover street, Philadelphia. I am a letter-carrier at present
160 by occupation. I learned weaving as a trade, and was in that business for 18 or 19 years, and gave it up in 1871, when I went into the post-office. I know Thomas Dolan, the defendant in this action, and worked for him from 1862 to 1871. I was first employed by him to run a rotary machine, and then all about the place, from one room to another, in running machinery—I mean knitting machines.

Q. 1. During what years have you been working a rotary machine there?

A. Well, I worked off and on from the time I went there until I quit.

Q. 2. What do you mean by off and on?

A. Well, I mean by off and on one time I would be up there warping, another time I would be working a double-rib loom.

Q. 3. Did you work a warp machine?

A. Yes.

Q. 4. Which was your principal occupation?

A. I worked one about as much as another.

Q. 5. Were you constantly employed in Thomas Dolan's factory from 1862 to 1871?

A. No; I believe not; one time I was away a few months on account of being slack.

Q. 6. Do you remember in what year that was?

A. No.

Q. 7. Was it shortly before you left?

(Objected to as leading.)

A. No; I don't believe it was. I think it was the fore part of my going there.

Q. 8. Have you been working in the warp-machine room at Thomas Dolan's factory?

A. Yes.

Q. 9. Were there any others working with you; and, if so, do you remember their names?

A. Yes; there was some few of them: George McDevitt, William McDevitt, Edward McDevitt, and I think there was a brother by the name of John McDevitt—he was a boy at that time—Geo. Mouseley, William Rose. I can't think of any other names.

161 Q. 10. How many machines were there in the warp-machine room?

A. I don't know; I wouldn't like to state how many; I couldn't exactly tell.

Q. 11. Was Cornelius Jackson working with you in the warp-machine room?

A. Yes; I believe he was.

Q. 12. Where did he work?

A. He worked close by me one while.

Q. 13. When was that?

A. It was just before I left.

Q. 14. How long did he work close by you?

A. I couldn't tell exactly how long; six months, maybe, to the best of my knowledge.

Q. 15. Did he work in the same room with you before the six months?

(Objected to as leading, and also as the question has been fully answered.)

A. He was in the room, on the opposite side.

Q. 16. Do you remember the number of the loom which you worked?

A. Not at present.

Q. 17. What kind of goods did you work at Dolan's?

A. I made trimmings, stockings, nubias, shawls, ruches.

Q. 18. Please examine the piece of fabric now before you marked "Exhibit Dolan No. 3," in book marked "Samples to 1869, Thomas Dolan," and state whether you understand it.

A. I understand the piece of fabric.

Q. 19. Did you ever make any fabric at Dolan's factory of the construction of the piece marked "Exhibit Dolan No. 3?"

A. I think not.

Q. 20. Can you answer positively?

A. I think I can; I believe I never did make it.

Q. 21. Did you ever see any fabric of that construction made in Thomas Dolan's factory while you were there?

A. No; I did not.

Q. 22. Do you believe that fabric of the construction of "Exhibit Dolan No. 3" could have been made at Thomas Dolan's factory
162 in considerable quantities and used for trimmings or nubias or other articles without your seeing it or knowing of it between 1865 and 1871?

A. Well, sir, that's a question I can't answer in that way. It may have been made there in another room. A man working in a room ain't supposed to know all that's going on in a whole mill. Mr. Dolan had a system there that one man shouldn't go in another room without so ordered by the superintendent.

Q. 23. Could any fabric of that construction have been made in the room or rooms in which you worked during those years in considerable quantities without your knowing of it?

A. Well, I don't know; I don't think it could without me knowing it if I worked alongside of it.

Direct closed.

Cross-examined by Mr. HARDING:

Cross-Q. 24. Are you willing to swear at this day that it would be impossible for you, between the years 1868 and 1871, to have made some fabric similar to "Exhibit Dolan No. 3," or might you not have made some of it and to-day have no recollection of the fact? You don't recollect all the fabrics that you made, do you?

A. I can pretty near swear I never made that like "Exhibit Dolan No. 3;" there's no ingenuity about it. Well, I can't recollect all without sight. If I would see them I could call them to mind if I made them any length of time.

Cross-Q. 25. Could not "Exhibit Dolan No. 3" have been made in the warp room while you were there, not supposing it to have been made on the loom beside you?

A. Well, it could have been made there, yes, without me seeing it.

Cross-Q. 26. What position did George Mouseley have in the warp room?

A. Same as myself—a journeyman.

Cross-Q. 27. Was he there when you left; and, if so, about how long did he remain there?

A. I think not; I think he left before I did. We were in
163 different rooms. He was foreman of the double-rib loom then before I left; I left before he left.

Cross-examination closed.

Examination closed.

GEO. A. HENHOEFFER.

Subscribed and sworn to before me this 6th day of February, 1884.

SAM'L R. BETTS,
*United States Comm'r, South. Dist. of New York.*

Adjourned to February 7th, at 11 a. m.

NEW YORK, *February 7th*—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

WILLIAM WARD, a witness called on behalf of the complainants in rebuttal, and having been first duly cautioned and sworn, testifies as follows in answer to questions by complainants' counsel:

My name is William Ward; my age is 47; I reside at No. 79 Waverly avenue, Brooklyn; a knitter by occupation; I work a warp loom; I work at 176 North Fourth street, Williamsburgh, at Muench's factory; I am running the looms on my own account. I have been a knitter for eighteen or twenty years. I am a naturalized citizen of the United States. I was born in England; I came to this country in February, 1864. I worked for Thomas Dolan, the defendant, from January, 1865, to July, 1869, about, on a warp loom that was in his factory in Philadelphia. I ran a warp loom all the time, except the first month or two I was there; it was in the warp-loom room, on the ground floor. I worked on making knit goods; I made nubias, trimmings, stockings, shawl goods, &c.

Q. 1. Please examine the piece of fabric now before you,
164 marked "Exhibit Dolan No. 3" in book marked "Samples to 1869, Thomas Nolan," and state whether you understand its construction.

A. Yes; I do.

Q. 2. Did you ever make any fabric of the construction of "Exhibit Dolan No. 3" at Thomas Dolan's factory while you were working there?

A. No.

Q. 3. Did you ever see any made there?

A. No.

Q. 4. Would you have seen it if it had been made there in the warp-machine room during the time when you were working there?

A. Yes; I should.

Q. 5. Did you see the different patterns that were made there on the warp looms, excepting Boot's sample loom?

A. I think I did.

Q. 6. Did you ever see any fabric of that construction in Thomas Dolan's factory while you were working there, either in the ware-room or in any other parts of the factory?

A. No, sir.

Q. 7. Did you see the knit goods which were exposed for sale in the Philadelphia market between 1864 and 1871; and, if so, did you ever see any goods of the construction of "Exhibit Dolan No. 3" exposed for sale there?

A. I don't know that I ever saw many, except exposed in the windows. I never saw any goods of that construction for sale.

Q. 8. Were you interested in the different styles of nubias or other knit goods which appeared in the market in Philadelphia during those years?

A. I should say, certainly.

Q. 9. What kind of nubias did Thomas Dolan make at the time when you worked there? I mean nubias of what construction.

(Objected to as indefinite.)

A. He made four or five kinds. I can't describe them except as looped nubias.

Q. 10. Do you think that if any fabric of the construction of "Exhibit Dolan No. 3" had been made at Thomas Dolan's
165 factory in considerable quantities during any of the years between 1864 and the time when you left you would have known it?

A. I think I should.

Direct closed.

Cross-examined by Mr. HARDING:

Cross-Q. 11. Do you recollect the construction of all the fabrics made at Thomas Dolan's on the warp looms while you were there so as to be able to recognize them if they were shown to you now?

A. I think I would.

Cross-Q. 12. Look through this book carefully and state whether, at each piece, fabric of which said piece would be a sample was or was not made on warp looms at Thomas Dolan's while you were there. I don't want your opinion, but your absolute knowledge.

(Objected to as improper on cross-examination, the witness not having testified on his direct examination as to any parts of the book before him, besides "Exhibit Dolan No. 3," and also because there is no evidence that any of the other samples in said book were made at Thomas Dolan's factory.)

Counsel for defendants states that in no part of his question is it set out that the book shown witness contains sample "Exhibit Dolan No. 3," but merely contains a large number of pieces of fabrics pasted on the blank leaves of said book.

(Complainants' counsel makes the further objection that the question is incompetent and improper.)

A. The only answer I would give would be that I saw a great many of them made, but I wouldn't swear I had seen them all made.

Cross-Q. 13. Those that you can't swear you had seen made might have been made, might they not?

(Same objection by complainants' counsel.)

166 A. Certainly.

Cross-Q. 14. You don't know what Root made on his sample loom, do you?

A. I seen most he made; I would not swear I seen all during the time I worked there.

Cross-Q. 15. You don't know whether he made "Exhibit Dolan No. 3" there or fabric similar to that on his sample loom at Dolan's, do you?

A. No; I don't.

Defendant's counsel requests the examiner to certify that the book referred to in Q. 12 and 13 is a book of samples, of which "Exhibit Dolan No. 3" is one, and the book is marked on the back "Samples to 1869, Thomas Dolan," and is the same book which has been before referred to in this case under that title.

The examiner so certifies.

Examination closed.

WILLIAM WARD.

Subscribed and sworn to before me this 7th day of February, 1884.

SAMUEL R. BETTS,
*United States Comm'r, South. Dis. of New York.*

JAMES ROSE, a witness called by the complainants in rebuttal, and having been first duly cautioned and sworn, testifies as follows in answer to questions by complainants' counsel:

My name is James Rose; my age is sixty-one; I reside at No. 544 Myrtle avenue, Brooklyn; I am a knitter by occupation; I have been one ever since I was seventeen. I came over from England in July, 1866; I went to work at Thomas Dolan's, the defendant in this action, a few days after I landed; I worked there until 1872. I made stockings, shawls, nubias, and trimmings at Dolan's factory in Philadelphia; I ran a warp machine and a double rib;

167 I ran the warp machine from 1866 to 1872, and the double rib for five weeks in 1872. The men who worked with me were Cornelius Jackson, William Ther, William McDevitt, William Cane, Edward McDevitt; I think that's all; it's all I can remember.

Q. 1. How far from you did Cornelius Jackson work?

A. About three machines in the double-rib shop and two in the warp shop.

Q. 2. How many machines were there in the warp-machine room?

A. Either fifteen or seventeen; I wouldn't say which.

Q. 3. What kinds of goods did you make?

A. Shawls, stockings, nubias, trimmings.

Q. 4. Examine the piece of fabric before you marked "Exhibit Dolan No. 3," in the book marked "Samples to 1869, Thomas Dolan," and state whether you understand its construction.

A. Yes; I do.

Q. 5. Did you ever make any fabric of that construction at Thomas Dolan's factory while you were employed there?

A. No.

Q. 6. Did you ever see any made there during that time?

A. No.

Q. 7. Did you ever see any fabric of the construction of "Exhibit Dolan No. 3" at Thomas Dolan's factory, either in the ware-room or in any other part of the factory, during the time when you were employed there?

A. No.

Q. 8. Would you have seen it if it had been made there in the warp-machine room during the time when you were working there?

A. Yes.

Q. 9. Were you interested in the patterns of knit goods which appeared in the market in Philadelphia and were exposed for sale there during the time when you were employed at Thomas Dolan's? I don't mean interested pecuniarily, but generally interested.

A. I was always interested to see anything fresh if I could.

Q. 10. Did you ever see any fabric of the construction of
168 "Exhibit Dolan No. 3" in Philadelphia during the years 1866–1872?

A. No.

Examination closed.

Cross-examined by Mr. HARDING:

Cross-Q. 11. You don't know whether fabric similar to "Exhibit Dolan No. 3" was or was not made on the warp looms at Thomas Dolan's while you were there, do you?

A. I never saw it; I don't know.

Cross-Q. 12. Might it not have been made without your seeing it?

A. I don't think it could.

Cross-Q. 13. Then you mean to say that to-day you would be able to recognize any and all the fabrics made on the warp looms at Thomas Dolan's while you were there?

A. Not all of them.

Cross-Q. 14. Was there not a rule at Thomas Dolan's when you were there that men working in one room were not allowed to go into another without permission from the superintendent or some person capable of giving such permission, unless sent?

A. I believe there was.

Cross-Q. 15. How much opportunity while you were employed at Dolan's did you have to go around and see what was on the market from all sources in knitted-good fabrics?

A. Not much; only on Saturday afternoons.

Cross-examination closed.

Redirect by Mr. KNAUTH:

Redirect Q. 16. Is there anything peculiar in the appearance of "Exhibit Dolan No. 3" which would fasten such fabric on your mind more than other knit goods?

A. No.

Redirect Q. 17. Do you believe that fabric of the construction of "Exhibit Dolan No. 3" could have been made in the warp-machine room for four weeks in succession without your seeing it during the time when you were employed in that room?

169 A. I don't think it could.

Redirect Q. 18. Did you see the new patterns which were made in the warp-machine room during that time or did you talk about them with the other workmen?

A. Well, I seen a good many. Yes; I talked about them.

Redirect Q. 19. You never saw the pattern "Exhibit Dolan No. 3" nor talked about it there, did you?

A. No.

Redirect closed.

Recross:

Recross-Q. 20. If I were to show you a piece of fabric would you be able to tell me whether that piece of fabric had or had not run on the warp looms of Thomas Dolan while you were there for four weeks?

A. I could tell you some of them.

Recross-Q. 21. Could you tell all?

A. Oh, no.

Recross-Q. 22. When I used the words four weeks I meant about four weeks or more. Do you answer my question the same way?

A. I could tell some of them; not all.

Recross closed.

Re-redirect examination:

Re-redirect Q. 23. Why is it that you do not believe that fabric of the construction of "Exhibit Dolan No. 3" could have been made in the warp-machine room at Thomas Dolan's for four weeks in succession without your seeing it while you were working there?

(Objected to as indefinite and misleading, as the witness might or might not have seen the fabric while he was there and yet not be able to recollect it to-day.)

A. Well, I used to go past the machines many times in a day.

170 Re-redirect Q. 24. How does fabric of the construction of "Exhibit Dolan No. 3" appear on the loom?

(Objected to as indefinite and misleading.)

A. I don't know; I never seen it.

Re-redirect Q. 25. If it appeared on the loom in the same way as it appears before you in the piece marked "Exhibit Dolan No. 3" do you believe that you would have seen it if it had been made for several weeks in succession in the warp-machine room while you were there?

A. I think I should.

Examination closed.

JAMES ROSE.

Sworn and subscribed to before me this 7th day of February, 1884.

SAM'L R. BETTS,
*United States Comm'r, Southern District of New York.*

WILLIAM WARD, recalled by complainants' counsel, testifies as follows in answer to complainants' counsel:

Q. 16. Were novel patterns which were made at Thomas Dolan's factory at the time when you worked there usually talked about by the men who worked in the room where they were made?

(Objected to as leading.)

A. If it was anything new it was generally talked about.

Q. 17. Do you think that fabric of the construction of "Exhibit Dolan No. 3" would have been talked about if made in the warp-machine room while you were there?

(Same objection.)

A. It being different to the rest of the patterns they were making, it would have been

171 Q. 18. What is there in the piece "Exhibit Dolan No. 3" that makes it appear different from the other goods?

A. I hardly know how to answer it. It is the general make.

By Mr. HARDING:

Cross-Q. 19. Look through the book and let me know if there are no fabrics in it that present to the eye a somewhat similar appearance.

(Objected to as improper subject for cross-examination.)

A. I should say no.

Cross-Q. 10. I mean with reference to the construction and stitch.

(Same objection.)

A. I think not.

Examination closed.

WILLIAM WARD.

Sworn and subscribed to before me this 7th day of February, 1884.

SAMUEL R. BETTS,
*United States Comm'r, South. Dist. of New York.*

Adjourned to Monday, February 11, 1884, at 11 a. m.

MONDAY, *February* 11, 1884—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

EDWARD M. TOWNSEND, a witness called in rebuttal on behalf of complainants, and having been first duly cautioned and sworn, testifies as follows:

172 My name is Edward M. Townsend; my age is 53; I reside at No. 19 East Twenty-second street, New York city; my place of business is No. 90 Franklin street, New York; I am a commission merchant, a member of the firm of Townsend & Yale for the last thirty years; we deal in knit goods and hosiery. I know Thomas Dolan, the defendant in this action, and have had dealings with him, and was his selling agent in New York from 1862 to the summer of 1878; we were his sole selling agents in New York for knit goods, and most of the time his sole selling agents for everything he made; I think there was one year in the fall when he made some knit goods for James M. Billings & Co., who were in New York; the present firm of Kibbe, Chaffee, Shreve & Co. succeeded them; Billings is dead; I think Mr. Chaffee was one of Billings & Co.

Q. 1. Please examine the piece of fabric marked "Exhibit Dolan No. 3," in book marked "Samples to 1869, Thomas Dolan," and state whether you understand its construction.

A. No, sir; I do not.

Q. 2. I do not mean its mechanical construction, but what it is.

A. I understand it is a woolen-worsted fabric, knitted upon some kind of machine.

Q. 3. Can you distinguish of what parts it consists or what figures it describes?

A. It is known as the double pillar; I never made a piece of it.

Q. 4. Did you ever receive any goods of the construction of the piece "Exhibit Dolan No. 3" from Thomas Dolan in the course of your business with him during the years from 1864 to 1871?

A. I could not swear that I had.

Q. 5. Do you remember whether you ever have seen any goods of that construction received from Dolan during those years?

A. I have no recollection about it whatever.

Q. 6. Would you recollect other styles of goods which Thomas Dolan sent to you as his agents during those years?

A. Some I should.

173 Q. 7. Would you recollect it if goods of that construction, made up into nubias, had been sent to you in considerable quantities by Thomas Dolan during any of those years?

(Objected to as indefinite, the question not setting out whether the witness would remember at that date or would remember now.)

(Question withdrawn.)

Q. 8. Would you recollect it now if goods of that construction, made up into nubias, had been sent to you in considerable quantities by Thomas Dolan during any of those years?

A. If they'd been very active I should have been very likely to have remembered it.

Q. 9. Do you remember having seen any goods of that construction in the market prior to the time when they were brought out by Messrs. Jennings & Sons, about the year 1878?

A. No.

Q. 10. Were you interested in the different patterns of knitted goods which appeared and were sold in the market during the time when you were in business with Mr. Yale?

A. I was interested in the different patterns that came upon the market in so far as I considered them a desirable merchantable article.

Q. 11. Do you regard fabric of the construction of "Exhibit Dolan No. 3" as a desirable merchantable article according to its construction or the way in which it may be used in order to make articles which are used now by the public?

A. It would not be of much use to make a stocking of; it is a desirable article for the purposes for which it is intended—exceedingly.

Q. 12. Would any one else besides you in your firm be likely to know of it or to recollect it if articles of that construction had been sent to you by Thomas Dolan and sold by you for him?

(Objected to, as the witness cannot be called upon to give his opinion as to the extent or likelihood of another's memory.)

174 A. I don't think they would be.

Q. 13. Had you exclusive charge of the business department to which goods of that description would go?

A. I had exclusive charge of my business. No, sir; except in a general way.

Q. 14. Who had charge of the department of knitted goods of the construction of the class of goods into which you would put fabric "Exhibit Dolan No. 3" during the years from 1863 to 1871?

(Objected to as indefinite, the witness having stated that the only thing he knows of the construction is that it is called "double pillar." The question may, therefore, mean double-pillar class or knit-good class, and is therefore indefinite.)

A. I don't know.

Direct examination closed.

Cross-examination by Mr. HARDING:

Cross-Q. 15. The fact is, is it not, that you do not remember whether fabric similar to "Exhibit Dolan No. 3," made up, was or was not consigned to and sold by you for Thomas Dolan & Co. some time during the years 1863 to 1872?

A. I have no recollection of having seen it.

Cross-Q. 16. Is it not so, in your line of business, that fabrics or styles or stitches may be brought out, have a sale of not very great magnitude, not be considered very successful stitches or styles by

the trade in general, be withdrawn, then, after lying dormant for some period, be again brought forward, what may be popularly called "catch on," and have a very successful run?

A. Yes, sir; very often the case.

Cross-Q. 17. Might not this have been the case with "Exhibit Dolan No. 3?"

A. It might.

Cross-Q. 18. In that case you might yourself at that time have considered it not a very successful stitch or style; it might then have passed from your mind, and upon being brought forward
175 again have had a great sale, and then you wonder how you could, if you had seen it before, consider it anything but successful?

A. I could say yes to that. It might have happened. A stitch is very apt to grow upon your sympathy from the manner in which it sells.

Cross-Q. 19. Take the facts as I state them, that Thomas Dolan & Co. might have sent you nubias, &c., made with this stitch and style of construction, and the effect have been with these fabrics such as I have stated in my last question, and then Jennings & Co. bring it out again with great success, would you have any recollection of Dolan's consignment any more than if the bare question had been asked you without these facts?

A. In this particular fabric I should not have been likely to have remembered it, or I do not remember it.

Redirect examination by Mr. KNAUTH:

Redirect Q. 20. If such a fabric had been sent to you in considerable quantities and sold by you for Dolan would not you now remember it?

(Objected to as grossly leading and also as indefinite, the quantity being indefinite.)

A. If it had had a large sale and very extensive run I should have been likely to remember it; but if not, not.

Redirect Q. 21. Would your books show whether you had received any fabric of the construction of the piece "Exhibit Dolan No. 3?"

A. They would not. We keep nothing on our books that would designate the pattern.

Redirect closed.

Recross:

Recross-Q. 22. About how much quantity sold and about how great a continuity of sale would there have to be to make a fabric like "Exhibit Dolan No. 3" considered by you a successful one with regard to nubias?
176 A. It would be successful in reference to nubias if we sold 5,000 dozen in a month or six weeks, but if that would take the whole selling season I would not consider it a success in nubias.

Examination closed.

EDW. M. TOWNSEND.

Subscribed and sworn to before me this 11th day of February, 1884.

SAM'L R. BETTS,
*United States Comm'r, South. Dist. of New York.*

Adjourned to Tuesday, February 12th, at 12 o'clock.

TUESDAY, *February 12th*—12 o'clock.

Met pursuant to adjournment.
Present: Counsel as before.

WILLIAM NEWTON, a witness called on behalf of complainants in rebuttal and having been first duly cautioned and sworn, deposes as follows in answer to questions by complainants' counsel:

My name is William Newton; age, 53; I reside at 353 Myrtle avenue, Brooklyn. I am a lace-maker and a knitter. I am working a warp machine at the present time. I have been a knitter for the last twenty years. I know the defendant, Thomas Dolan. I went to work with him in the early part of 1866—I believe it was in May—and I was there pretty near two years. Afterwards I went to work with John Taylor. Taylor & Dolan was in partnership at the time I worked for them. After Taylor failed I went back to work for Dolan for about two weeks; then I worked for him a third time afterwards, but I don't recollect for how long. At Dolan's I
177 worked in both the double-rib and the warp room. There were four McDevitts there, and William Cane (he is dead, I believe) and George Beck; William Thur; he is dead, and Owen Thur; he is in England; and Samuel Stokes; he is down East somewhere; James Rose; William Chamberlain; he is in Philadelphia; William Ward; that—about all I can recollect. There was but machines in that room.

Q. 1. Examine the piece of fabric now before you, marked "Exhibit No. 3" in book marked "Samples to 1869, Thos. Dolan," and state whether you understand its construction."

A. Yes; I do.

Q. 2. Did you ever make any fabric of that construction at Thomas Dolan's factory while you were working there?

A. I did not.

Q. 3. Did you ever see any made there while you were there?

A. No.

Q. 4. Was there any such fabric made at Thomas Dolan's factory in the rooms where you were working at the time when you were there?

A. No.

Q. 5. Can you state that positively?

A. Yes.

Q. 6. Is there anything in the appearance or construction of that fabric which would impress it upon your mind, if once seen, more than other knitted fabrics?

A. Yes; it's a purl fabric; it's what I never saw made on a knitting machine in my life until I saw it at Jennings'.

Q. 7. Can you describe what its peculiar character or appearance is?

A. Yes; it has a lofty appearance and is light, and anybody that has ever been in the knitting business, it would attract their attention right away.

Q. 8. When did you first see any fabric of that construction?

A. In a store window in Philadelphia, somewhere about Eighth and Race; I think it was 1878; it struck my fancy the moment I saw it in the window.

Q. 9. Did you buy any then?

A. No; I did not. I knew I could make it without.

Q. 10. Do you mean that after seeing it in the window you
178 understood its construction sufficiently to be able to imitate it when you are at home?

A. Yes.

Q. 11. Have you always been interested in the new patterns of knit goods that were brought out in the market in Philadelphia during the times when you were there?

A. Yes.

Q. 12. Did you inspect the show-windows of the principal stores where such goods were exposed to the eyes of the public?

A. Yes. If I wanted a new pattern any time I used to go out on purpose to get ideas.

Q. 13. Could fabric of that construction have been made in Philadelphia and sold in considerable quantities during the time when you were in Philadelphia without you seeing it or knowing of it?

A. It could not.

Q. 14. Do you look at the styles of nubias and other knit fabrics which are worn on the street by girls and women and children?

A. Yes.

Q. 15. And you never saw any fabric of that construction worn in Philadelphia before the time when you saw it in the store windows, as you just now stated?

A. No.

Q. 16. How long have you lived in Philadelphia?

A. Since 1864, off and on, for 12 years. I left Philadelphia in 1870, and I went back again in 1875.

Direct closed.

No cross-examination.

Examination closed.

WILLIAM NEWTON.

Subscribed and sworn to before me this 12th day of February, 1884.

SAM'L R. BETTS,
*United States Comm'r, South. Dist. of New York.*

Adjourned to Saturday, February 16, 1884, 11 a. m.

179 SATURDAY, *February* 16, 1884—11 a. m.

Adjourned by consent to Monday, February 18, 1884, at 11 a. m.

MONDAY, *February* 18, 1884—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

HENRY C. YALE, a witness called on behalf of the complainant in rebuttal, *and* being first duly cautioned and sworn, testified as follows in answer to questions by complainants' counsel:

My name is Henry C. Yale; my age is 54; I reside in New York city; by occupation a commission merchant, engaged in the sale of hosiery and fancy knit goods, at No. 90 Franklin street, New York, under the firm name of Townsend & Yale. That firm has existed for 28 years. Our firm was selling agent for Thomas Dolan, the defendant in this case, from 1861 until about 1877 or '78. I have been familiar with knit goods since 1854, and have sold a general assortment of nubias, scarfs, shawls, hoods, capes, &c., known as fancy knit Germantown goods.

Q. 1. Please examine the piece of fabric now before you marked "Exhibit No. 3," in book marked "Samples to 1869, Thomas Dolan," and state whether you understand it.

A. I understand it is a piece of fancy knit goods.

Q. 2. Can you discern how it is constructed, what figures it forms, or describe it in some more definite way?

A. I cannot.

Q. 3. Is the fabric woven in such manner that it shows openings or not?

(Objected to as leading.)

A. If you mean by that the openings shown in the fabric, I say it has, where it is joined together.

180 Q. 4. Are the openings formed by the joining together of the fabric?

(Objected to as leading.)

A. It would appear so.

Q. 5. Can you distinguish that fabric from the other fabrics in the book before you, or do they all appear to you to be the same?

A. I very readily distinguish it from the other fabrics in the book, and they do not all appear to be the same.

Q. 6. Did you ever receive from the defendant, Thomas Dolan, any fabric like "Exhibit Dolan No. 3" prior to the year 1872?

A. I do not know.

Q. 7. Would you remember it if fabric of that construction had been sent to you or your firm, as agents, by Thomas Dolan prior to 1872?

A. Probably not unless sent in large quantities in some special style of goods.

Q. 8. If it had been made up in nubias and then sent to you in considerable quantities would you then remember it now?

A. I think I should.

Q. 9. Do you remember in what year you first saw fabric of the construction of "Exhibit Dolan No. 3?"

A. No; I do not.

Q. 10. If fabric of that construction had been made up into articles so as to appear prominently in them, prior to 1872, and sent to you in considerable quantities would you now remember it?

A. I think I should.

Q. 11. While you were agent for Mr. Dolan were you generally interested in the different patterns of knit goods which were sold in the market?

A. Yes; of his make especially.

Direct closed.

Cross-examination by Mr. HARDING:

Cross-Q. 12. What do you call a considerable quantity which would make you remember it?

181 A. Where goods are coming in from day to day and week to week or month to month in quantities from one to two hundred dozen in all.

Cross-Q. 13. Then you mean to say you recollect to-day every fabric of which you have sold one or two hundred dozen?

A. I couldn't say that that would be positively so.

Cross-Q. 14. Then the fact is that you do not know whether you did or did not sell for Thos. Dolan & Co. fabrics made up of construction similar to "Exhibit Dolan No. 3'" in the years from 1865 to 1872. Is that so?

A. It might be possible that it might have been used on a trimming, but I have no recollection of the fabric as I see it here coming to us as a made-up article entire, as in hoods, nubias, shawls, &c.

Cross-Q. 15. Both Thos. Dolan and Mr. Henry Truitt swear that amounts of this fabric were consigned to your firm. Taking it for granted that they so swear, would that have any effect on your belief as to its sale by your firm?

(Objected to, first, as to the statement of fact contained in the question and to the question as irrelevant, immaterial, and improper.)

A. I would believe that we sold all the goods that were consigned to us by Messrs. Thos. Dolan & Co., except such as might have been returned to their Philadelphia agents.

Cross-Q. 16. If Thos. Dolan swears that certain goods of which you have no recollection were consigned to you at a certain period and you have no other way of finding it out would you believe they were consigned?

(Objected to as irrelevant, immaterial, and improper.)

A. If I had no other way—I don't know.

Cross-Q. 17. Your partner, Mr. Townsend, said that there would be no way of finding out from the books whether fabrics similar to

Exhibit Dolan No. 3 had or had not been consigned to your firm by Thos. Dolan & Co. Do you still answer Cross-Q. 16 in the same way?

(Same objection.)

182 A. I should believe that Mr. Dolan, if he swore that he consigned us certain kinds of goods, that he would swear according to the best of his knowledge and belief and should not think of doubting his veracity.

Cross-Q. 18. Is there anything particularly impressive about Exhibit Dolan No. 3?

A. To my mind, as being a fancy fabric suitable for trimmings, as I see it now, and probably should have judged it so if I had seen it before 1872.

Cross-Q. 19. How large a sale of nubias and in what time constitutes a successful fabric?

A. That depends on the style of the goods, as 500 dozen in one number might be considered as much success as 2,000 dozen in another number.

Cross-Q. 20. How many dozen and in what time would you have to sell of fabric similar to Exhibit Dolan No. 3 to make it successful?

A. Several hundred dozen, I should think, if made into anything.

Cross-Q. 21. What branch of the business of your firm did you conduct between 1865 and 1872?

A. Every branch, especially in the fancy-knit woolen goods such as Thos. Dolan made.

Cross-Q. 22. Were you more so than your partner?

A. Yes; I sold the great majority of the goods in those years, as well as superintending and looking after the getting up of styles and suggesting them, visiting the mills that produced the goods, and making suggestions as to their general get-up.

Cross-examination closed.

HENRY C. YALE.

Sworn and subscribed to before me this 18th day of February, 1884.

SAM'L R. BETTS,
*United States Comm'r, South. Dist. of New York.*

Adjourned to Wednesday, February 20, at 11 a. m.

183 WEDNESDAY, *February* 20—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

ROBERT WARD, a witness called in rebuttal on behalf of the complainants, and having been first duly cautioned and sworn, testifies as follows in answer to questions by complainants' counsel:

My name is Robert Ward; my age is 42; I reside at South

Orange, New Jersey; by occupation I am a manufacturer of worsted, woolen, and knit goods, doing business at No. 80 Franklin street, New York, under the firm name of French & Ward; I have been in that business for 20 years, all that time under the same firm name.

Q. 1. Examine fabric now before you marked "Exhibit Dolan No. 3," in book marked "Samples to 1869, Thomas Dolan," and state whether you understand it.

A. Yes.

Q. 2. Did you ever see any fabric of the construction of "Exhibit Dolan No. 3" prior to the time when such goods were bought out by Messrs. Jennings & Sons, about the year 1878?

A. No.

Q. 3. Were you interested in the different styles of knit goods that appeared in the market during the time when you were in business as you have just stated?

A. Yes.

Q. 4. Did you carefully watch what new patterns were introduced and sold during that time?

A. Yes.

Q. 5. Do you believe that goods of the construction of the piece "Exhibit Dolan No. 3" could have been manufactured and sold in any considerable quantities prior to the time when they were brought out by Messrs. Jennings, as before stated, without your seeing them or knowing of them?

A. I do not.

Q. 6. Can you state that positively as far as the New York market is concerned, and confining your answer to the time when you were in business, as stated by you?

(Objected to as indefinite.)

184 A. Yes, I can; I am very positive.

Q. 7. Is the fabric "Exhibit Dolan No. 3" a kind of fabric which would naturally impress itself upon your mind if once seen made up into an article, be it a nubia, hood, or other article worn by the people?

A. I should certainly notice it; anything like it that had come on the market I certainly should have noticed.

Q. 8. Did you ever sell or manufacture any goods of the construction of "Exhibit Dolan No. 3;" and, if so, when?

A. Yes; it was after November, 1879, the date we took the license from Mr. Jennings.

Q. 9. Do you still hold that license from Mr. Jennings to manufacture or sell such goods?

A. Yes.

Q. 10. Is it possible that the defendant, Thomas Dolan, can have manufactured goods of the description of "Exhibit No. 3" and sold them, either in the Philadelphia or the New York market, in any considerable quantities, between the years 1864 and 1871, without your being in any way informed of it?

A. I don't think it would be possible.

Q. 11. Do you answer the question in the same way, confining the manufacture and sale to any one of those years?

A. I do.

Direct closed.

Cross-examined by Mr. HARDING:

Cross-Q. 12. You answer the questions in the direct examination in reference to the fabric "Exhibit Dolan No. 3" in the way you do from the fact that you cannot believe that a fabric which has had the success that this fabric has since 1879 or thereabouts could have been put on the market between 1865 and 1872 without at that time having such success that you would have heard of it and remembered it to this day. Is that so?

A. Yes.

Cross-Q. 13. Might not a fabric be put upon the market without being much of a success, then withdrawn, and after some time be again placed on the market with great success?

A. As a general proposition, I suppose it might if you don't limit the question to this particular thing during these years.

185 Cross-Q. 14. Might not such have been the case with fabric similar to "Exhibit Dolan No. 3?"

A. I think not.

Cross-Q. 15. Why?

A. During all these years I was a prominent manufacturer of these goods, and it was my place to keep informed as to everything that came on the market. There were only a few large manufacturers of this class of goods, and I think it would have been impossible for any reasonable quantity—any fair quantity—for anything new to have been sold to the trade without my seeing it.

Cross-Q. 16. Then you can remember every fabric that has been put on the market during the time you have been in business. Is that so?

A. Every fabric of any importance, of any prominence, or anything that approximates to that sample.

Cross-Q. 17. Then you don't remember all the fabrics? In fact, you only remember not seeing or knowing anything of fabrics similar to "Exhibit Dolan No. 3" from the fact that they were similar to "Exhibit Dolan No. 3?"

A. I have a general remembrance of all knit fabrics made for nubias and hoods and similar purposes during these years.

Cross-Q. 18. Have you a remembrance of all such knit fabrics during those years?

A. I think if you should show me any knit fabrics made for nubias or hoods I could tell whether it was on the market at any time during those years.

Cross-Q. 19. That is independent of the quantity sold?

A. I think I could, within reasonable limits.

Cross-Q. 20. Would it not have to be, in the trade term of to-day, "a selling fabric," for you to remember it?

A. It would have to be sold to the trade, so that in going from one concern to another it would be visible and I could see it.

Cross-Q. 21. You would have to see it in a good many jobbing-houses, would you not, in some quantity?

A. It would have to be placed around amongst the trade, so that when I went around from house to house I should have to see it at some one of them.

Cross-Q. 22. Do you mean to say that if you went into one jobbing-house and they had a dozen nubias similar to "Exhibit
186 Dolan No. 3" that you would remember to-day having seen that fabric?

A. I do.

Cross-Q. 23. Then if I show you a fabric you can tell me whether a dozen nubias or more have been put on the market since 1865?

A. I think, if you show me anything that was as noticeable as that, I could.

Cross-Q. 24. Supposing that there had been no demand by the public for that fabric, would its noticeableness have counteracted its bad sale, in your memory?

A. I am speaking as to the effect it had on my mind, without regard to the sale; the sale came afterwards.

Cross-Q. 25. Supposing that there had been no successful sale after 1879—that is, supposing you had just seen the fabric in 1879 and upon trying it on the market it had been a very poor success—would that make any difference in the positiveness of your recollection?

A. I don't think it would.

Cross-examination closed.

Redirect:

Redirect Q. 26. Are your answers to the questions put to you on your direct examination the same, irrespective of the sale or success which the fabric of the construction of "Exhibit Dolan No. 3" has had in fact, if it has had any?

A. Yes.

Redirect Q. 27. Do you remember the circumstances of your first seeing such fabric; I mean the double pillar?

A. I think I do. I should think it might have been in about 1879.

Redirect closed.

Recross:

Recross-Q. 28. Is your belief so firm that you are willing to swear that knit goods constructed of fabric similar to "Exhibit Dolan
187 No. 3" was not put on the market prior to 1872 by Thomas Dolan & Co., as sworn to in defendant's testimony in this case?

(Objected to as requiring the witness to testify with regard to statements of which he has no knowledge.)

Defendant's counsel states that in the question the words "as sworn to," &c., do not relate to quantity, but it is a mere statement by counsel.

A. As far as my knowledge goes, no goods made out of this fabric were on the market prior to 1872.

Recross-Q. 29. "As far as my knowledge" means your belief, does it not?

A. It means my remembrance.

Recross-Q. 30. Might you not be mistaken?

A. I don't think that I am mistaken.

Recross-Q. 31. Then you are not sure but what you are mistaken?

A. I don't think I am.

Examination closed.

ROBERT WARD.

Sworn and subscribed to before me this 20th day of February, 1884.

SAM'L R. BETTS,
*United States Comm'r, South. Dist. of New York.*

Adjourned to Thursday, February 28, 1884, at 11 a. m.

THURSDAY, *February* 28, 1884—11 a. m.

Met pursuant to adjournment.

Adjourned to March 10, 1884, at 11 a. m.

188 MONDAY, *March* 10, 1884—11 a. m.

Present: Counsel as before.

Examination of Dr. T. O'CONOR SLOANE continued by Mr. KNAUTH, of counsel for complainants:

Q. 4. Please answer Q. 3, not yet answered by you, which is as follows: "Have you read the evidence given by the defendants in these suits."

A. I have read most or all of the evidence given by defendants up to the date of the commencement of my examination, May 21, 1883.

Q. 5. Have you read the evidence—all of it—given by Mr. Henry B. Renwick for the defense?

A. I have.

Q. 6. How do you understand that the reticulation of the fabric is formed which is described and claimed in letters patent No. 218,032, "Complainants' Exhibit Mechanical Patent?"

A. The reticulated fabric is claimed in two clauses of the claim of the patent in question as the "reticulated lace purling composed," &c. No particular kind of reticulation is specified in the claims and no limitation of the method of reticulation appears in them.

Q. 7. Then you differ from Mr. Renwick, who says that the patent is clear on the subject; that the reticulation is formed by joining the chains or meshes "*d.*"

A. In the specification of the patent a method of forming the reticulation is described. Your sixth question referred to what was claimed in the patent. Mr. Renwick's reference cited by you is correct as regards the specification of the patent, but is incorrect if it be understood to refer to what is claimed. No such limitation can be discerned in the claims.

Q. 8. Have you seen any fabric of the construction described in complainants' mechanical patent, with the chains set close to each other, so as not to show to the eye any room or distance between them? By chains I mean the rows of meshes *a a* named in the patent.

A. In the fabrics which I have seen some interval between the rows of meshes has always been discernible.

189 Q. 9. Please look at the piece, "Exhibit Dolan No. 3," examining as well its face as its back, and state whether the chains or rows of meshes lie close side by side in that piece or show a distance or space between them.

A. On the face of the "Exhibit Dolan No. 3" an interval or space between the rows of meshes is discernible on the back; in places an interval is also found, while in other places the two rows of meshes come in contact with each other, so that for a short distance hardly any space can be found between them.

Q. 10. Are the loops of the fabric "Exhibit Dolan No. 3" held flat and substantially in the plane of the meshes *a a?*

A. They are.

Q. 11. Mr. Renwick, on his direct examination for the defense, says as follows: "The patent states that, instead of two, three or more rows of meshes or chains *a* for each pillar may be used, and, further, that were it not for the multiple row of meshes in each pillar the loops *b* would turn up, and thereby destroy to a great extent the beauty of the fabric which — is desired to produce by this invention. This statement is incorrect, and unless the chains or rows of meshes are placed at a distance apart, as it is stated they may be in the patent, and not adjoining each other, as shown in the drawing, the drawings themselves showing that the loop will turn up as purl, and the fabric when made presents, as I know, the purled appearance as shown in the drawing." Please state what the drawings of the mechanical patent show with reference to the situation of the loops in the fabric.

A. The drawings of the patent show that the loops maintain a position parallel to the plane of the double row of meshes, the plane of the loops following the twistings of the double row of meshes, forming a species of warped surface.

Q. 12. Do you understand that the patent claims the fabric shown in the drawing where the rows of chains or meshes are placed close to each other, or that the claim is intended to cover the reticulated fabric whether the chains adjoin each other or are placed at a distance apart in each pillar, so that the loops *b* will traverse the space between the two rows of chains?

A. I understand that the claim is for a reticulated fabric, con-

sisting of pillars, with laterally projecting loops, and two or
190 more continuous rows of meshes, without any limitation as to the contiguity of the several rows of meshes being contained in the claim.

Q. 13. Have you examined and do you understand design letters patent No. 10448, granted to Warren P. Jennings February 12th, 1878, for design for a fringed lace fabric; and, if so, what do you understand to be the design described and claimed in said patent?

A. I understand the distinctive feature of the design to be the fringes B B. Each fringe or pillar of the fringe is composed of a central stem or rib, with loops at both sides. The claim is for a lace fabric, whose design is not specified, provided with disconnected doubly looped fringes *B*, substantially as shown. From the specification and claim of the patent I understand the design that is claimed to be a lace fabric of usual kind, the design of which is not limited, provided with fringes substantially such as shown.

Q. 14. I read you now Mr. Henry B. Renwick's answer to the third question put to him on his direct examination for the defense, and also the question. Please state whether you differ with Mr. Renwick as to the correctness of the answer thereto given by him; and, if so, in what particulars and why. The question and answer referred — are found on p. 146 of defendant's printed record.

A. I differ from him in his views of what is described and claimed in said patent. In the design patent No. 10448 no fabric composed of meshes of chains and loops, the chains being united at intervals, so as to form a reticulated fabric, is described. The lace fabric of the design patent in question is not described at all, the patentee not being limited to any particular kind of fabric for the body of the design. In the illustration accompanying the patent no reticulated fabric at all similar to what is described in the fabric patent No. 218,032 is shown. In both fabrics of the design patent No. 10448 and of the fabric patent No. 218,032 the loops are not the same, are not held in the same way by the chain, and the chains are not united in the same way to form the reticulation. In saying this I refer, as it is perfectly evident that Mr. Renwick did, to the fabric composing the body of the structure. Taking the next sentence of
Mr. Renwick's answer, I find no single chains in the design
191 patent performing the duty of confining the loops and of "attaching the pillars to its neighbors." The answer you have referred me to does not describe what is shown in the design patent No. 10448.

Q. 15. When a fabric constructed as described in Complainants' Exhibit Mechanical Patent No. 218,032 is pulled so as to be ready for use, does it change or keep its appearance? State whatever you know about that fabric concerning its appearance on the loom as well as afterwards when it is taken off and pulled so as to be ready for use.

A. When said fabric is on the loom it is stretched out longitudinally, with its reticulated openings closed, so as to occupy comparatively a narrow width upon the loom. When pulled so as to be ready for use it is widened and the reticulations are opened. Nearly a year ago I visited Mr. Jennings' factory, and I think I saw some

of this same fabric upon the loom. From what I did see there I derived the impression that this fabric on the loom would be very much compressed laterally, so that it would be difficult to distinguish whether it was reticulated or not.

Q. 16. What difference, if any, is there in the appearance of the fabric described in Complainants' Mechanical Patent No. 218,032 as compared with the same fabric having but one row of meshes or chains to hold the loops together?

A. The double row of meshes would certainly tend to hold the loops flat and in the plane of the meshes.

Q. 17. Where there is only one chain or row of meshes do you find any plane of such meshes?

A. One row of meshes is hardly enough to determine a plane, while the double or multiple rows of meshes determine one with accuracy.

Q. 18. Does it make a difference whether you place the two rows of meshes close together or leave some space between in the pillar, as to the position of the loops?

A. If the chains were separated by a considerable distance they would probably tend to keep the loops a little flatter. It is a question of degree, and within the limits of the usual construction of such a fabric it would make little difference whether the two rows were close together or were separated.

Q. 19. Please look at the piece marked "Exhibit Dolan No. 3" and state whether that piece shows the fringes described in "Com-
192 plainants' Exhibit Mechanical Patent" in the second claim thereof, and also in Complainants' Exhibit Design Patent.

A. I do not find such fringe shown in "Exhibit Dolan No. 3."

Q. 20. Is it possible to produce the fringes described in my question by simply cutting fabric of the construction of "Exhibit Dolan No. 3" through?

A. It would not be possible, as by cutting it no real fringe could be produced. By pulling the small reticulations open a bias has been given to the pillars, which would prevent their hanging down and forming a fringe if the fabric were cut as you describe.

Q. 21. Have you examined and do you understand the construction of the nubia marked "Complainants' Exhibit Dolan Nubia B?"

A. I have.

Q. 22. Please compare the nubia marked "Complainants' Exhibit Dolan Nubia B" with the fabric described and claimed in Complainants' Exhibit Mechanical Patent 218,032.

A. I find the invention contained in said letters patent stated to consist in an improved reticulated purling, with the laterally projecting loops of each pillar bound by two rows of meshes, and also in the providing this improved purling with fringes. The first claim is for the reticulated lace purling, composed of pillars *A A*, each pillar consisting of laterally projecting hoops *b b* and of two or more continuous rows of meshes, whereby the loops are held flat, substantially as specified. In the fabric marked "Complainants' Exhibit Dolan Nubia B" I find a reticulated lace purling, composed of the precise elements specified in this claim. The second

claim is for "the reticulated lace purling, composed of pillars *a a* and of fringes *c c*, the fringes being a continuation of the pillars, substantially as specified." In the fabric in question I find precisely this structure containing all the elements of the 2d claim.

Adjourned to Tuesday, March 11th, 11 a m.

193 TUESDAY, *March 11th*, 1884—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Continuation of the direct examination of Dr. T. O'CONOR SLOANE:

Q. 23. Please compare the nubia marked Complainants' Exhibit Dolan Nubia A with the fabric described and claimed in "Complainants' Exhibit Mechanical Patent 218,032."

A. The exhibit in question is a reticulated lace purling, composed of pillars, each pillar consisting of laterally projecting loops and of two continuous rows of meshes. Those meshes hold the loops flat in the way described in the patent. The fabric is also provided with fringes which are continuations of the pillars. The exhibit represents what is claimed and described in the patent.

Q. 24. Does it, in your opinion, make a difference that, as Mr. Henry B. Renwick says in his testimony for the defense, the loop threads are carried over from one pillar into the neighboring pillar?

A. That feature of construction does not make a difference, because the fabric is a reticulated lace purling, composed of the elements specified in the patent.

Q. 25. Then you do not understand the first claim of patent 218,032 to be for a definite concatenation of the threads which forms a reticulated fabric?

A. I do not understand the first claim of the patent to be for a single concatenation of specific threads in a fabric. I understand it to be broadly for a reticulated lace purling, composed of the elements of that claim. In that claim I do not find a limitation to a particular kind of concatenation.

Q. 26. I call your attention to the fact that Mr. Henry B. Renwick, in his direct testimony for the defense, asserts that the fringe of "Complainants' Exhibit Dolan Nubia A" differs in appearance from the fringe of the patented fabric, because the loops do not, during the whole length of each member of the fringe, project laterally from the pillars. Does that, in your opinion, make a difference so far as the construction of that fringe is concerned, as compared with the patented fabric?

194 A. The patent in question is the mechanical patent No. 218,032. The claim of the patent referring to a fringe is for the reticulated lace purling, composed of pillars and of fringes, the fringes being a continuation of the pillars. The claim is for a structure, not for a design, and the question of appearance does not enter into it; hence such difference in appearance, which is but a slight

one, would not, even if considerable and striking, make any difference in the relations existing between the mechanical patent and the exhibit.

Q. 27. Mr. Renwick further says that the claim of the design patent No. 10448 may be construed in two different ways; that it may include both the fabric and the fringe shown in the drawing accompanying it, or that it may be construed to relate only to the design of the fringe, and that in either case "Complainants' Exhibit Dolan Nubia A" does not contain the design claimed in said design patent 10448. Is that answer or statement correct, in your opinion?

A. The claim of the patent in question is for a design for a lace fabric provided with a fringe. The witness speaks of a construction of the claim, including both "the fabric and the fringe;" hence this construction suggested by the witness is quite untenable. He suggests another construction in which the claim would relate to the design of the fringe alone. The construction of the claims of a patent is outside of the functions of an expert witness. The two constructions suggested by Mr. Renwick depart materially from the matter of the claim of the patent. The claim being for what I have stated, the design claimed appears in the nubia A, as in the words of the claim it is "a lace fabric provided with disconnected doubly looped fringes B, having loops at both sides of a central stem or rim, substantially as shown." As far as the wording of the claim is concerned, its matter is all contained in the nubia A, and the question of design is, of course, one of appearance of the fringe.

Q. 28. Does your answer apply as well to "Complainants' Exhibit Dolan Nubia B" as to Complainants' Exhibit Dolan Nubia A," supposing that Mr. Renwick makes the same statement just quoted by me with regard to Complainants' Exhibit Dolan Nubia B?

A. It does.

Q. 29. Do you find that the fringe of nubia B has loops
195 projecting laterally on both sides of a central stem or rib, substantially as shown in design patent No. 10448?

A. I do.

Q. 30. Please examine the nubia marked "Defendant's Exhibit Single Pillar Nubia," and compare the same with the fabric described in "Complainants' Exhibit Mechanical Patent 218,032."

A. The single pillar nubia you refer me to differs in construction from the fabric of the patent, because the loops of the pillars are joined and held in place by single rows of meshes instead of double rows. The single row of meshes has not the effect of holding the loops as flat as the double row of meshes. That may be seen in "Complainants' Exhibit Dolan Nubia A."

Q. 31. Please look at the pieces of fabric marked "H. A. T. 28" and "H. A. T. 30," in Book of Samples to 1869, Thomas Dolan, and compare them with the construction of the fabric described in "Complainants' Exhibit Mechanical Patent 218,032," in the first claim thereof?

A. These fabrics differ from that claimed in the first claim of the patent, as the loops of the pillars are joined and held in place by single rows of meshes.

Q. 32. Please look at the piece marked "Exhibit Dolan No. 3" and state whether its appearance is the same as when you first saw it or not, and also when you first saw it.

A. I saw it first about a year ago, and since then it has deteriorated in appearance, owing to the amount of handling it has received?

Q. 33. How about its color?

A. As I recollect, its color has darkened a good deal, so that it looks much dirtier.

Q. 34. Please examine a sample marked "Truitt 1," in book marked "Samples 1877, fancy goods," and compare the sample with the fabric described in Complainants' Exhibit Mechanical Patent 218,032?

A. It differs entirely from the structure described and claimed in said patent. While the body consists of reticulated fabric, it is not reticulated lace purling, composed of pillars A A of the patent, and the fringes are not continuations of the same pillars.

196 Q. 35. Compare the same samples with the structure described in Complainants' Exhibit Design Patent 10448.

A. It differs from what is shown in the claim of said patent in the absence of doubly looped fringes, having loops at both sides of a central stem or rib.

Q. 36. Please compare samples marked "Truitt 2" and "Truitt 3," both in book marked "Samples 1876," as well with the mechanical patent No. 218,032 as with the design patent 10448. I mean the fabrics described in those patents.

A. What I have said in the last two answers applies to these two samples, as they do not possess the elements of either the design patent or the mechanical patent named in your question.

Direct closed.

T. O'CONOR SLOANE, *Ph. D.*

Subscribed and sworn to before me this 11th day of March, 1884.

SAM'L R. BETTS,
*United States Com'r, South. Dist. of New York.*

Adjourned to Friday, March 14, 1884, 11 a. m.

MARCH 14, 1884—11 a. m.

Adjourned by consent to March 20, 1884, 11 a. m.

MARCH 20, 1884—11 a. m.

Adjourned by consent to March 27, 1884, 11 a. m.

THURSDAY, *March* 27, 1884—11 a. m.

Met pursuant to adjournment.
Present: Counsel as before.

Mr. WARREN P. JENNINGS, recalled on behalf of complainants, testifies as follows:

Q. 24. Can you produce a nubia made in accordance with
197 the description given in the specification of letters patent No. 218,032, "Complainants' Exhibit Mechanical Patent," showing reticulated lace purling composed of pillars consisting of laterally projecting loops and of two continuous rows of meshes and having fringes, being a continuation of the pillars, as specified in said patent?

A. Yes; here is the nubia.

Complainants' counsel offers in evidence the nubia produced by the witness, and it is marked "Complainants' Exhibit Jennings' Nubia," S. R. B., U. S. Comm'r, March 27, 1884.

Q. 25. Was the nubia produced by you made under your direction?

A. It was.

Q. 26. Were the fringes of that nubia made according to the description contained in the specification of "Complainants' Exhibit Design Patent No. 10448?"

A. Yes.

Q. 27. Does it show the design described therein for a lace fabric provided with disconnected doubly looped fringes, having loops at both sides of a central stem or rib, substantially as shown in said patent?

A. It does.

Q. 28. Have you made considerable numbers of nubias under the two patents in suit and of substantially the same construction as the one now produced by you?

A. We have—large quantities.

Q. 29. Have other manufacturers of nubias and other knit goods taken licenses from your firm for the manufacture of such goods under the two patents in suit?

A. Yes.

Q. 30. Can you name some of them?

A. Conyers Button & Co., French & Ward, Ramien Bros. & Co., Henry Crine & William Marriott, Marriott & Cook, C. H. Vandenberger & Co., Sayre & North paid a royalty on what they made and agreed not to make any more.

Q. 31. Are they all in New York?

A. No.

Q. 32. State where they are, please.

A. Conyers Button & Co. are in Germantown, Philadelphia;
198 French & Ward are of Stoughton, Mass., and New York; Ramien Bros. & Co. are in Milwaukee, Marriott & Cook and Crine are all in Stoughton, Mass.; Vandenberger & Co. are in Philadelphia, and Sayre & North are in New York.

Q. 33. Are they the principal manufacturers of nubias and similar knit goods in this country?

A. Some of them are.

Q. 34. Is the William Marriott mentioned by you the same who made an affidavit on the motion for an injunction in this case?

A. Yes.

Complainants' counsel offers in evidence a certified copy of the affidavit of Wm. Marriott read on the injunction motion, which is marked "Complainants' Exhibit Marriott Affidavit," S. R. B., U. S. Comm'r, March 27, 1884.

(Objected to by defendant's counsel on the ground that the counsel for the complainant has no right to offer an *ex parte* affidavit for the purpose of rebuttal without producing the witness for cross-examination.)

Complainants' counsel offers in evidence a certified copy of a stipulation entered in the suit of A. G. Jennings and W. P. Jennings against James H. Sayre and Jos. W. North and James E. Hedges, by which the defendants acknowledge the validity of the patents set up in the bill of complaint filed November 24, 1879, and the same is marked "Complainants' Exhibit Sayre and North Stipulation," S. R. B., U. S. Comm'r, March 27, 1884.

It is stipulated between counsel for the respective parties that the bill in the suit of Jennings *et al. vs.* Sayre and North was brought on design patent No. 10388 and design patent No. 10448, and the bill was withdrawn on the entry of the stipulation last offered in evidence.

Complainants' counsel offers in evidence a certified copy of a decree for perpetual injunction entered in the suit of Abraham G. Jennings *et al.* against John E. Hodgkins in the United States circuit court, district of Massachusetts, and the same is marked "Complainants' Exhibit Hodgkins Decree," S. R. B., U. S. Comm'r, March 27, 1884.

Q. 35. Do you know where Thomas Stringer now is?

199 A. In Missouri last I heard of him.

Q. 36. Did he make an affidavit for the plaintiffs on the injunction motion?

A. Yes.

Complainants' counsel offers in evidence a certified copy of an affidavit of Thomas Stringer, read on the motion for an injunction in these cases, and the same is marked "Complainants' Exhibit Stringer Affidavit," S. R. B., U. S. Comm'r, March 27, 1884.

(Objected to by defendant's counsel on the ground that the counsel for the complainants has no ground to offer an *ex parte* affidavit for the purpose of rebuttal without producing the witness for cross-examination.)

Q. 37. How does the fabric which is made according to the description in the specification of patent No. 218,032 appear on the loom with reference to the reticulation—I mean is it possible while it is on the loom to distinguish the diamond-shaped openings between the pillars which it shows when taken off?

A. Well, it is possible to see them on close observation, but not otherwise.

Q. 38. Do the pillars lie straight on the loom or substantially so or are they bent as they appear to be in the nubia produced by you?

A. They are bent, but less than they appear afterward.

**Direct examination closed.**

Cross-examined by Mr. HARDING:

Cross-Q. 39. What do you understand by the pillars?

A. In this case the two parallel warp threads.

Cross-Q. 40. Do you know where Mr. Marriott is?

A. In Stoughton, Mass., I believe. It is about a year since I last heard of him.

Cross-Q. 41. Did you see him sign his affidavit?

A. I don't think I ever saw him.

Cross-Q. 42. How do you know he made an affidavit, then?

A. I have seen the affidavit and knew the circumstances at the time of his making it.

200 Cross-Q. 43. Then all you know about it is that you were told that Wm. Marriott made a certain affidavit?

A. I know more than that.

It is stipulated that the witness will give the same answers in regard to the affidavit of Thomas Stringer.

(Defendant's counsel objects to the entire evidence of this witness as far as it is in reference to "Complainants' Exhibit Jennings Nubia," as not being matter for rebuttal.)

WARREN P. JENNINGS.

Subscribed and sworn to before me this 27th day of March, 1884.

SAM'L R. BETTS,
*United States Comm'r, South. Dist. of New York.*

OTTILIE HARTMAN, a witness called on behalf of complainant and being first duly sworn, deposes and says:

My name is Ottilie Hartman. I reside at 249 Henderson street, Jersey City.

Q. 1. Have you at different times bought knit goods like nubias, shawls, or similar articles?

A. Yes, sir.

Q. 2. Have you the experience of an ordinary purchaser of such articles?

A. Yes, sir.

Q. 3. Please examine the fringes of the nubia marked "Complainants' Exhibit Jennings Nubia," which I now hand to you, and also the fringe of the nubia marked "Complainant's Exhibit Dolan Nubia A," and state whether there is any similarity between them, and whether or not you think you would be deceived by the similarity so as to buy the one for the other.

A. If I should buy them it would be all the same which one; there is no difference between.

Q. 4. I now hand to you a nubia marked "Complainants' Exhibit Kibbe Nubia B." Please state whether there is any difference or similarity between the fringes of that nubia and the

201 fringes of the nubia marked "Complainants' Exhibit Jennings Nubia."

A. No difference; if I should buy I would take one as soon as the other.

Q. 5. Have you worked with wool frequently and prepared any knit goods from time to time?

A. Yes; I have at home; and I used to work for large wholesale houses crocheting, and my father had a wool business of his own.

Q. 6. Have you a keen eye to discern the differences between different knit goods?

A. Yes, sir.

Direct closed.

Cross-examination by Mr. HARDING:

Cross-Q. 7. Please look at "Complainants' Exhibit Dolan Nubia" and "Complainants' Exhibit Jennings Nubia," taking one piece of fringe beside a corresponding piece of the other exhibit. Can you see no difference between the fringes?

A. Yes, sir; I can see a difference between them if I take a piece of each fringe.

Cross-Q. 8. Then if you took the fringe, without reference to the body of the nubia, you would not be deceived, would you?

A. Only if I examined them very close I would see the difference; otherwise I would not.

Cross-Q. 9. How many nubias or shawls do you buy a year? I do not refer to crochet shawls.

(Objected to as irrelevant.)

A. I would say one or two a year; but then I generally look at them when I go into stores.

Examination closed.

OTTILIE HARTMAN.

Subscribed and sworn to before me this 27th day of March, 1884.

SAM'L R. BETTS,
*United States Comm'r, South. Dist. of New York.*

202 WOLFRAM FLUGEL, a witness called on behalf of complainants, and being first duly sworn, deposes and says:

My name is Wolfram Flugel; age, 27 years; residence, Bayonne, New Jersey; by occupation, a bank cashier.

Q. 1. Have you at different times purchased knit goods, such as shawls, nubias, hoods, circulars, or the like?

A. Yes.

Q. 2. Have you the experience in the purchase of such goods which an ordinary purchaser has?

A. Yes, sir.

Q. 3. Are you a married man, with a family?

A. Yes, sir.

Q. 4. Do you sometimes buy knit goods for your wife and child?

A. Yes, sir.

Q. 5. Please look at the nubia which I now show to you, marked

"Complainants' Exhibit Jennings Nubia," and also at the nubia handed to you marked "Complainants' Exhibit Dolin Nubia A," which are both provided with fringes, and state whether there is a similarity or difference between the fringes on those two nubias and to what degree they are similar or different.

A. They are about alike.

Q. 6. Do you think that you would be deceived by the similarity of the fringes so as to buy one for the other?

A. I believe so.

Q. 7. Please examine the fringes on the nubia marked "Complainants' Exhibit Dolan Nubia B" and compare them with the fringes of nubia marked "Complainants' Exhibit Jennings Nubia," and answer the same questions with reference to the fringes of those two nubias.

A. Except the color they are about alike; I would buy one for the other.

Q. 8. Is the impression which they both convey to your eye the same?

A. Yes.

Q. 9. Is the same true as to the fringes of "Complainants' Exhibit Dolan Nubia A" and "Complainants' Exhibit Jennings Nubia?"

203 A. Yes, sir.

Direct closed.

Cross-examination by Mr. HARDING:

Cross-Q. 10. How many shawls or nubias do you buy a year?

A. About one.

Cross-Q. 11. How long do you take buying that?

A. As any ordinary purchaser would do.

Cross-Q. 12. Please compare the piece of fringe in "Exhibit Dolan Nubia B" and "Complainants' Exhibit Jennings Nubia." Are there any points of dissimilarity between them?

A. They are about alike.

Cross-examination closed.

Redirect:

Redirect Q. 13. What difference between the two fringes just compared by you do you find?

A. On close examination of one there seems to be a little distance between the loops on the under part. On the upper part they are alike exactly.

Examination closed.

WOLFRAM FLUGEL.

Subscribed and sworn to before me this 27th day of March, 1884.

SAM'L R. BETTS,

*United States Comm., South. Dist. of New York.*

Adjourned to Thursday, April 3, 1884, at 11 a. m.

THURSDAY, *April* 3, 1884—11 a. m.

Adjourned by consent to Thursday, April 10, 1884.

204 THURSDAY, *April* 10, 1884—11 a. m.

Met, pursuant to adjournment, at the office of George Harding, Esq., No. — Walnut street, Philadelphia.

Present: Antonio Knauth, Esq., of counsel for complainants; Geo. J. Harding, Esq., of counsel for defendant.

GEORGE BECK, being called by complainants for further cross-examination, testifies as follows in answer to questions by complainants' counsel, having been first duly sworn:

Q. 1. You stated on your former examination that you had seen Cornelius Jackson at work at fabric like "Exhibit Dolan No. 3," which I now show to you, at the factory of Thomas Dolan, a few years before you left it. Is this so, or were you mistaken when you so stated?

A. Then I was mistaken if I did say that. I don't remember as I did say so.

Q. 2. Then you did not see Cornelius Jackson work such fabric at Thomas Dolan's factory at all?

A. No, sir; I don't remember as I did.

Q. 3. Did you see any one about this fabric and talk with him shortly before the time when a man showed you a piece of it, who, as you understood, came from Jennings', as you testified heretofore?

A. Yes, sir.

Q. 4. Who was it?

A. It was the man that made the work—said he made it—Cornelius Jackson.

Q. 5. Did he call upon you?

A. Yes, sir; at my house.

Q. 6. How long before the time when Jennings' messenger called was it?

A. Well, it might be a week or might be four days; I could not say.

Q. 7. What did he say to you?

A. He asked me whether I could remember that work, and I answered, "No; I don't know as I can." He said he made it.

Q. 8. Did he show you a piece of fabric at that time?

205 A. Yes, sir.

Q. 9. How large was it?

A. Well, it, perhaps, might be as big again as that Exhibit "Dolan No. 3."

Q. 10. Was it white also?

A. No, sir; in colors.

Q. 11. Did he tell you when he had made it at Dolan's factory?

A. Well, I can't say he told me when he made it—what year he made it in.

Q. 12. How did you come to say that you had seen Jackson make

such fabric about two years before you left? Did he tell you that he had made it at that time?

A. Yes, sir.

Q. 13. Was that at the same time or was it later that he told you when he had made it?

A. Well, he told me about the same time as I was called up at Mr. Dolan's office.

Q. 14. When was that? Was it after the meeting with Jennings' man?

A. Yes, sir.

Q. 15. About how long afterwards?

A. It was two or three days.

Q. 16. What happened at Dolan's when you were called up there?

A. When I got there they asked me what the gentleman from Jennings wanted when he came to my house. I said he showed me a piece of work and asked me whether I knew Dolan made that work, and I said, "Yes," and he asked me whether I knew any of the men who worked there at the time, but I couldn't think of any but Cornelius Jackson, him that made it.

Q. 17. When you stated to Jennings' man that you had seen such fabric made at Dolan's you did not state the truth then?

A. I did not, if I said so; I did not.

Q. 18. Did Jackson or Dolan or any one else ask you to state that you had seen Jackson make it at Dolan's factory?

A. No, sir; no creature ever asked me to do that.

Q. 19. Did you say that you had seen such fabric made at Dolan's factory because you believed Cornelius Jackson, and he had told you that he did make it?

206 A. Well, if I did say so I can't remember. If I did say so it was because I believed Cornelius Jackson did make it.

Q. 20. But you are sure now that you did not see it made at Dolan's factory while you were there?

A. I am sure I did not.

Q. 21. Have you always been working on the warp loom at Dolan's factory?

A. Well, always but some odd times when we were put on the double-rib looms, but that was only for a little while.

Cross-examination closed.

It is stipulated and agreed between counsel that Mr. Bennett, of counsel for defendant, may object to any of the foregoing testimony taken to-day, and further examine, if he so desires, at a time convenient to complainants' counsel.

Complainants' counsel calls GEORGE BECK as a witness for complainants, who, being duly sworn, testifies as follows:

Q. 22. How long have you been working in the warp-loom shop of Thomas Dolan's factory?

A. I went there in October, 1863, and I left there in December, 1872; that will be nine years.

Q. 23. When was it that you worked in the double-rib room?

A. I can't remember when it was.

Q. 24. For how long a time did you work in the double-rib room?

A. That would only be for a few weeks; only once, as I know.

Q. 25. Did you ever see any fabric like "Exhibit Dolan No. 3" made at Thomas Dolan's factory while you were working there?

A. No, sir.

Q. 26. Did you see most of the fabrics which were being made in the warp-loom shop?

A. Yes; I worked in the room and saw all.

Q. 27. Would you remember it if fabric like this piece, "Exhibit Dolan No. 3," had been made in the warp-loom shop while you were working there?

A. I should if it had been made while I was there.

207 Q. 28. Are you sure that such fabric cannot have been made there in any considerable quantities in the warp-loom shop while you were working there?

A. Well, I would not like to say that.

Q. 29. (Question repeated.)

A. I can't remember it, sir.

Q. 30. You mean you can't remember having seen that fabric there?

(Objected to, as the question has been fully answered.)

A. That's what I mean, sir.

Q. 31. Did Jackson tell you when he came to your house, a few days before Jennings' messenger called, why he showed you a piece of such fabric and asked you questions about it?

A. He didn't tell me anything. He asked me whether I could remember that work and I told him, "No."

Q. Did you ever make an affidavit in these cases?

A. I can't remember as I did.

Q. 33. If you ever did state that you had seen Jackson work fabric like "Exhibit Dolan No. 3," or that you had ever seen such fabric on the loom at Thomas Dolan's factory, were you mistaken then in such statement?

A. If I did say it I was mistaken.

Q. 34. Was the piece of fabric which Jackson showed to you when he called at your house of the same construction as the piece "Exhibit Dolan No. 3" in the book before you?

A. Yes; it was the same. It was purl work.

Examination closed.

Cross-examination waived.

GEORGE BECK.

Subscribed and sworn to before me this 10th day of April, 1884.

SAM'L R. BETTS,
*United States Comm'r and Special Examiner.*

(Recess until 2 p. m.)

208 2 p. m.—Met after recess.
Present: Counsel as before.

Adjourned until new notice.

PHILADELPHIA, PA., *May* 8, 1884—11 a. m.

Met at the office of George Harding, Esq., 901 Walnut street, Philadelphia, pursuant to notice hereto annexed.

Present: Antonio Knauth, Esq., of counsel for compl'ts, and Geo. J. Harding, Esq., of counsel for def'ts.

The witness, GEORGE BECK, is examined by defendants' counsel in accordance with the stipulation made at the last meeting:

Q. 35. Are you the George Beck who testified heretofore in this case?

A. Yes, sir.

Q. 36. Were you in any way connected with Mr. Dolan at the time you testified at 901 Walnut street in behalf of the defendants in this case, on February 19, 1883?

A. No, sir; I have not worked for him since 1872.

Q. 37. Were you offered any money or any consideration of any kind to come and testify in that case at the time last spoken of?

A. No, sir.

Q. 38. You were sworn at that time, were you not?

A. Yes; I think I was.

Q. 39. Then you came at that time as a voluntary witness without any promise and without being subpœnaed. Is that so?

(Question objected to as leading.)

A. Yes, sir.

Q. 40. Did you not testify to all the facts set out in your testimony of your own free will and knowledge?

209 A. No, sir; it was not what I knowed myself; it was what I was told; that was what I went from.

Q. 41. When you say you have seen something what do you mean by that?

A. The same as that gentleman showed me—work that came from New York—and Cornelius Jackson showed me some.

— 42. (Question repeated.)

(Objected to as improper re-examination of the witness.)

Q. 43. When you say you have seen anything don't you mean to say that you have seen it yourself?

A. Yes.

Q. 44. Is your testimony that you gave about February 19, 1883, false or true—which?

A. That was false, sir; I made a sad mistake there.

Q. 45. Didn't you understand you were under oath at the time?

A. I was under oath, but I got so excited I hardly knew what I said. When I went away I found myself in error.

Q. 46. Do you know what perjury is, Mr. Beck?

(Objected to as improper and irrelevant.)

A. It is false swearing, isn't it? Well, I did not do it intentionally.

Q. 47. When did you first see or have any communication with any person representing the complainants after February 19, 1883?

A. I don't recollect seeing anybody.

Q. 48. When the gentleman who represented himself as coming from New York showed you a piece of purl fabric in December, 1881, what answer did you make to him?

A. He asked me whether I knowed whether Dolan made that work and I said, "Yes."

Q. 49. What made you say that?

A. Well, I believe it made me say that—was seeing some Cornelius Jackson showed me before I seen that.

Q. 50. Was your reply to the gentleman from New York the truth or a falsehood?

210 A. Well, I couldn't prove it myself any more than what I was told.

Q. 51. Didn't you make an affidavit in this case on or about the 11th day of December, 1881?

A. I don't remember signing my name to any paper then—when I was at Dolan's office.

Q. 52. Did you sign and swear to the original of this paper, which purports to be a copy of an affidavit?

A. I don't remember ever saying that I seen that work made there at the time I went to Dolan's office.

Q. 53. Mr. Beck, is it true that you came to this country, landing in New York, October 21, 1863?

A. Yes, sir.

Q. 54. Is it true that you then went into the employ of Thomas Dolan and remained there until 1872?

A. Yes; I got work the same week as I landed.

Q. 55. Is it true that you were always engaged in running an English warp loom while you were in Thomas Dolan's employ?

A. Except once, and then some of us went into the double-rib room for two or three weeks while we were short of work; that is the only time.

Q. 56. Is it true or not that you examined the fabric "Exhibit Dolan No. 3," in book marked "Samples to 1869, Thomas Dolan," in December, 1881?

A. I can't remember examining that; if I did I forget all about it. I never saw it made.

Q. 57. When you swore positively that such fabric (referring to "Exhibit Dolan No. 3") was manufactured at Thomas Dolan's before you left in 1872, and in considerable quantities, you swore falsely, did you?

(Objected to because the witness has not testified that such fabric was made in considerable quantities.)

A. Yes, sir; I went by what I was told. I did not go by what I seen myself, because I never did see it. I am sorry I made the mistake.

Q. 58. Did anybody promise you anything to swear to that fact or tell you to swear to it?

A. No, sir; no one.

211 Q. 59. Then you swore falsely on your own account, did you not?

A. Well, I said so through other people telling me.

Q. 60. Then you did not find out your error until 1883. Is that so?

A. Yes, sir; I found it out when I went away.

Q. 61. What caused you to find it out?

A. Because I begun thinking and found I had said what I had no business to say, and I had no peace for a week after it.

Q. 62. Who told you you had said something which you had no business to say?

A. My conscience told me, sir.

Q. 63. What made your conscience keep quiet for two years?

A. It's not been quiet; it never has been quiet since.

Q. 64. When you gave your testimony did you understand what you were doing?

A. I did after I had done it, sir.

Q. 65. Ain't you able to take care of yourself, Mr. Beck?

A. Not always I ain't.

Q. 66. Were you in February, 1883?

A. No, sir; I was about the same as I am now—in bed now for four years.

Q. 67. Do you know what you are testifying now?

A. Well, I couldn't remember what I have said, but I don't know that I have said anything wrong.

Q. 68. After your examination in 1883, when did you first receive any knowledge whatever that you were wanted to testify again in the case?

A. I don't know as I ever thought about having to come again. I thought I had done with it. It was four weeks ago last Monday Mr. Knauth called at our mill.

Q. 69. What did Mr. Knauth say to you?

A. He told me I'd got to come here, I think, on such a day of the month. I think it was on Thursday.

Q. 70. Did he say nothing to you about your prior testimony?

A. He said he wanted to ask me a few more questions. I think that was about all.

Q. 71. What did you say to Mr. Knauth?

A. Well, I believe I said I wished I had done with it.

212 Q. 72. What did Mr. Knauth say to that?

A. I don't know as he said anything more, except that he wanted to ask me a few more questions, and he told me to be here at such a time in the morning.

Q. 73. You have sworn to-day that you testified in February, 1883, without any compensation or any promise for the present or future or without anybody telling you to testify as you did. Now, will you be kind enough to tell me why you should testify then in a manner which you now say is false?

A. Well, I testified then because I was told about the work. It is not what I seen myself, because I never did see it.

Redirect closed.
(Recess until 2 p. m.)

Met after recess.
Present: Counsel as before.

Recross-examination of the witness BECK by Mr. KNAUTH:

Cross-Q. 74. When I called upon you a few weeks ago and subpœnaed you to testify again in these cases did I hold out any inducements to you to state that you had made statements on your former examination which were untrue?

A. No, sir; nothing of the kind.

Cross-Q. 75. You have stated that a few days after the gentleman called upon you, whom you understood as coming from Mr. Jennings, you were called to Mr. Dolan's office. How long did you stay at Mr. Dolan's office at that time?

A. About two hours or two and a half.

Cross-Q. 76. Who was present at Dolan's office while you were there and were talking about this matter?

A. Cornelius Jackson and Mr. Bennett.

Cross-Q. 77. Was Mr. Dolan present?

A. He came in sometimes and then went into the ware-rooms; he didn't stay in.

Cross-Q. 78. Who spoke with you at that time?

213 A. Mr. Bennett.

Cross-Q. 79. Did Cornelius Jackson also speak with you?

A. Yes, sir. He said he worked the loom and made the work. His loom was the third in front of me, the one he said he made it on.

Cross-Q. 80. Did Mr. Dolan also speak with you?

A. No, sir.

Cross-Q. 81. Did Jackson tell you how much of that fabric he made on the loom?

A. I don't know as he said how much he made. I can't remember.

Cross-Q. 82. Can you explain to us in what way you came to testify that you had seen him make it on that loom?

A. Well, it was through hearing Jackson say he worked the loom and he made the work. That is how I come to say it and how I come to know.

Cross-Q. 83. Did they talk with you about this matter during that whole time when you stayed at Dolan's office?

A. I can't remember as they talked about it. They asked me what that gentleman said as come from New York and what I said to him.

Cross-Q. 84. Did you do anything else at Dolan's office but to speak with Cornelius Jackson and Mr. Bennett?

A. Not that I know of, sir.

Cross-Q. 85. Did you speak with any other persons about this

matter after the man from Mr. Jennings had called and before you went to Dolan's office?

A. No, sir.

Cross-Q. 86. Was Jackson very anxious to get other witnesses who would testify to the manufacture of that fabric?

A. Well, I believe he went to one or two of the men who worked at Dolan's and they didn't know anything about it, and that's all I know.

Cross-Q. 87. Is Cornelius Jackson a friend of yours?

A. Well, yes; we have been friends for many years. I've not seen him to speak to him but once since a year ago last February.

Cross-Q. 88. You have said that when Jackson called upon you and showed you a piece of this fabric you told him that you had
214 never seen it made before at Dolan's factory. Did you tell him or Mr. Bennett afterwards, at Dolan's office, that you had seen it made?

A. No, sir; I can't remember that I said anything of the kind, because I have not seen it made.

Cross-Q. 89. Then Jackson must have known at that time that you did not know anything about this fabric?

A. I don't know whether he knowed or not; I knowed I knowed I didn't.

Cross-Q. 90. You did not tell him in any way that you had seen it or that you had seen him work it?

A. No, sir.

Cross-Q. 91. How soon afterwards did you see Jackson again?

A. I don't recollect seeing him again until we came here.

Cross-Q. 92. How soon afterwards did you see Mr. Bennett again?

A. Not until I was called here; the first time I did come.

Cross-Q. 93. Do you remember whether you signed any paper at that time when you were at Dolan's office?

A. I don't recollect signing any paper. I don't remember that I did.

Cross-Q. 94. I understand that what you told Jackson and Mr. Bennett at Dolan's office was only that a gentleman from Jennings' had called upon you and shown you a piece of this fabric, and that you had answered him that Jackson had made such work, and that was all you told them?

A. Yes, sir.

Cross-Q. 95. And the answer which you gave to Jennings' man you gave to him because a few days before Jackson had told you he had made such work?

A. Yes, sir.

Recross closed.

Re-redirect by Mr. HARDING:

Re-redirect Q. 95. Then when you were at Dolan's office at that time if you swore or signed any affidavit in which you said
215 that you were positively sure that fabrics similar to "Exhibit Dolan No. 3" were made at Thomas Dolan's before 1872 you knew you were swearing falsely. Is that so?

(Objected to, as there is no evidence that he did sign an affidavit, but, on the contrary, the witness has testified that he does not remember ever having signed any.)

A. I don't remember swearing anything at Dolan's office or signing any paper. I can't remember as I did.

Re-redirect Q. 96. What did Mr. Knauth say to you when he met you in this office on April 10, 1884?

A. I don't know he said anything, sir.

Re-redirect Q. 97. Is that as true as the rest of your testimony?

A. Yes, sir; I don't remember him saying anything.

Re-redirect Q. 98. Is not the fact that your health is in such bad condition that you don't know what you are saying or what you have said?

A. I can't remember everything I say, nor I can't remember half.

Re-redirect Q. 99. Did you say nothing to Mr. Knauth on April 10, 1884?

(Objected to as immaterial and improper.)

A. I said I had made a mistake; I was sorry I had done it.

Examination closed.

GEORGE BECK.

Subscribed and sworn to before me this 8th day of May, 1884.

SAM'L R. BETTS,
*United States Commissioner and Special Examiner.*

MARTIN LANDENBERGER, a witness called on behalf of complainants, and being first duly cautioned and sworn, testifies as follows in answer to questions by complainants:

My name is Martin Landenberger; my age is sixty-four; I reside on Howard street, below Harrison street, Philadelphia;
216 my business is a manufacturer of knit fabrics, at the same address. I have manufactured knit fabrics here in Philadelphia for over forty years. I have had as many as 700 or 800 employees at one time. I made almost every kind of knit goods—fancy, as well as staples, nubias, hoods, circulars, &c. I have seen goods of the construction of "Exhibit Dolan No. 3" on the Philadelphia market for some six or eight years, more or less. I never made the goods. I never saw the inducement for me to make them. I understood it was a patented fabric. I don't recollect of having seen any fabric like that before this patent came out. I do not know when the patent was granted.

Q. 1. Would you recollect it if fabric of the construction of "Exhibit Dolan No. 3," now before you, had been sold in any considerable quantities on the Philadelphia market in the years between 1864 and 1870?

A. Well, I no doubt would have seen it if it had been in the market offered largely, but I don't recollect having seen it.

Q. 2. Did you keep yourself informed about the different styles of goods that appeared upon the market in Philadelphia?

A. Yes, sir. We found what the various stores keeping those goods had from time —. We always kept ourselves posted on anything fresh and anything new.

Q. 3. If fabric of the construction of "Exhibit Dolan No. 3" had been made up into nubias and other conspicuous articles and thrown on the market in Philadelphia could that have escaped your notice?

A. Not if any quantity had been in the market; not if they were sold really and regularly.

Q. 4. From the fact that you do not remember having seen such fabric in the market prior to the year 1870 or in that year do you believe that it cannot have been sold in Philadelphia in any considerable quantities?

A. Yes, sir; I believe so. If it had I would have seen it, undoubtedly.

Q. 5. Look at the fringe of the nubia marked "Complainants' Exhibit Dolan Nubia A," and also at the fringe of the nubia marked "Complainants' Exhibit Jennings Nubia," and compare the two fringes, and state whether or not you think that
217 they are of such similarity that an ordinary purchaser might be misled into taking one for the other.

(Objected to, as the witness is not an ordinary purchaser, and also as the witness does not sell to ordinary purchasers, selling only wholesale.)

A. There is a difference in the fringe, but an ordinary purchaser might be led astray to take one for the other, yet there is a difference which a manufacturer can see in an instant.

Q. 6. Is the general appearance of the fringe the same?

A. Not exactly.

Q. 7. Is the general impression which they convey to the eye the same?

A. They have a strong resemblance, yet there is a difference visible all the time between the two.

Q. 8. Look at the fringe of the nubia marked "Complainants' Exhibit Dolan Nubia B" and compare the same with the fringe of "Complainants' Exhibit Jennings Nubia," and state whether there is any similarity between these two fringes.

A. There is more difference between these two than the other. The difference is greater. All fringes have some resemblance, but there is evidently a difference here.

Q. 9. Do you believe that they are so far similar that ordinary purchasers would be deceived?

(Same objection as to Q. 5.)

A. Well, it's possible that an ordinary purchaser would take one for the other and would not.

Q. 10. Your eye is well skilled in discovering the differences of different knit fabrics, is it not?

A. Yes, sir.

Direct closed.

Cross-examined by Mr. HARDING:

Cross-Q. 11. Might not fabric similar to "Exhibit Dolan No. 3" have been on the Philadelphia market in 1866?

A. I don't know of it being on the market.

218 Cross-Q. 12. When and how did you first see it, to your knowledge?

A. It was brought to my factory. I can't say the year, but it was the time that the goods were first put on the market by Jennings.

Cross-Q. 13. Was that in 1869 or 1870?

A. I don't recollect. I don't know what year it was in.

Cross-Q. 14. Was it before or after 1876?

A. It was certainly before 1876, I think. I don't know, yet I could not be certain about it. I have no dates to go by.

Cross-Q. 15. Might you not have seen fabric similar to "Exhibit Dolan No. 3" prior to 1870, supposing said fabric not to have been what might be called a successful fabric at that time, and have ceased to remember the fact at this day?

A. I don't remember to have seen anything like—if I once see a thing I can generally carry it. It's possible that anything might slide by, but I don't recollect seeing it before Jennings' nubia came out.

Cross-Q. 16. Then the fact is that you don't recollect whether it was or was not on the market?

A. I do not.

Cross-examination closed.

Redirect:

Redirect Q. 16. To the best of your recollection, the fabric was not in the market before 1870?

A. It was not.

By Mr. HARDING:

Recross-Q. 17. Is your memory about "Exhibit Dolan No. 3"—that is, of not having seen it prior to 1870—as good as your memory as to the date when you first saw it?

A. I don't know how to answer that.

MARTIN LANDENBERGER.

Subscribed and sworn to before me this 8th day of May, 1884.

SAM'L R. BETTS,
*United States Comm'r and Special Examiner.*

Adjourned to Thursday, May 22, 1884, at 11 a. m.

219 By consent of counsel the book of samples containing "Exhibit Dolan No. 3" was enclosed and sealed by the commissioner and delivered to complainants' counsel, to be opened by him before the commissioner or notary at Hartford before whom the deposition of the witness Kibbe is to be taken on May 22d, said book to be enclosed and sealed again by the commissioner or notary and to be returned to the depository, Examiner Betts, thus sealed.

Examination of witnesses on the part of the complainants, at Hartford, Connecticut, on May 29, 1884, before E. E. Marvin, clerk United States circuit court for the district of Connecticut.

HENRY R. KIBBE sworn:

Int. 1. State your name, age, residence, and occupation.

A. My name is H. R. Kibbe; age is fifty-seven years; my present residence is Somers, Tolland county, in this State, and my occupation is commission business in New York and Philadelphia. We deal in shirts and drawers, gloves and mitts, cardigan and knit jackets, and fancy knit woolens. We sell most everything that is manufactured in this country except piece goods. We do a large business in hosiery.

Int. 2. What is your firm name?

A. Kibbe, Chaffee, Shreve & Co.

Int. 3. Are you one of the defendants in one of the suits in which your testimony is being taken?

A. I believe I am; at least my name is there. That is the way the notice is. It reads so. I have never seen the records of the suit. I presume that we sold the goods about which this contention is. I am the senior member of the firm. I have had very little to do with the active part of the business since my father died up in Somers, for I have been there a great part of the time.

Int. 5. When did your father die?

(Defendant's attorney objects to the question as irrelevant and immaterial.)

220 A. I could not tell; I don't recollect the date; it was between this time and five years ago; that, I think, would cover it.

Int. 6. Was you an active partner of your firm when the suit of A. G. Jennings & Sons, in which this testimony was taken, was brought—that is, in the latter part of the year 1881?

A. I do not know what you mean by active partner.

Int. 7. Were you taking part actively in the transaction of any business connected with your firm at that time?

A. Well, I haven't taken an active part, as where a man goes to his business regularly, daily, but I have occasionally when I have been in Philadelphia. When any questions arose that they would ask my opinion about I have given it them, and may have occasionally sold a few goods, but very few.

Int. 8. What was the name of your firm before it was Kibbe, Chaffee, Shreve & Co.?

A. In New York it was Kibbe, Chaffee, Shreve & Co., the same as it is to-day; in Philadelphia it was Kibbe, Chaffee & Co.

Int. 9. For how long was the firm in existence under these names?

A. I think it was three years, because our partnership generally run three years, although we had some that run only two.

Int. 10. Between what years was the firm name Kibbe, Chaffee & Co. in Philadelphia?

A. My impression is that that partnership terminated one year ago the 1st of last January—that is, January 1, 1883.

Int. 11. What was the firm name before that in Philadelphia?

A. My impression is that it was the same back to 1880.

Int. 12. Before 1880; what was the name then?

A. I think it was the same then; I don't think the style of the firm name was changed till you get back to 1871 or '2.

Int. 13. What was it before 1871 or '2?

A. When you get back to 1870 our firm was Kibbe, Colladay & Trout.

Int. 14. How long did that firm exist?

A. I think two years back from 1871.

Int. 15. What was the firm name before that time?

A. It was Roop, Kibbe & Co.

221 Int. 16. How long did that partnership exist?

A. That partnership did not exist but little time. Mr. Roop died, and after awhile Mr. Colladay came in to take his place, and the firm name was changed. What I mean by a little time is that it was a small portion of the three years for which the partnership was formed; it may be a third of the time or a trifle more; I cannot tell within three or four months of the time.

Int. 17. What was the name of the firm before it was Roop, Kibbe & Co.?

A. It was Roop & Kibbe.

Int. 18. How long did that partnership exist?

A. Three years; I think it existed in 1865, 1866, and 1867, commencing in December; I know most all our partnerships existed from December 1.

Int. 20. Since when have you been in business altogether?

A. I think in February, 1849.

Int. 21. Have you any memoranda about these things about which you are testifying, or are you testifying from memory?

A. Partly from both.

Int. 22. When were these memoranda made?

A. Well, I could not tell exactly; one or two of these memorada as regards the partnership of Roop & Kibbe, I happened to be looking over the partnership articles of agreement between Roop & Kibbe yesterday—that is, I have a copy of it—and I took the date of the articles of agreement an. put it in my note book.

Int. 23. Was it altogether accidentally that you were looking over these papers?

A. I was looking for those papers at that time; I was looking for a contract with a man to put a steam-heater in my house.

Int. 24. But you accidentally found those papers informing you of the time when the partnership of Roop, Kibbe & Co. had an existence?

A. I do not know as I should call it accidentally, for I was looking for the other paper and saw that and picked it up.

Int. 25. Why did you take down the memorandum?

A. I took down the memorandum so that I would know the dates when the firm of Roop & Kibbe were in existence.

222 Int. 26. What purpose had you to know those dates?

A. Because I had been summoned down here on this case, and might want to know.

Int. 27. When did you first learn of this case?

A. What do you mean by that?

Int. 28. When did you first begin to know about this case?

A. I could not tell the date. I have heard it talked over, but could not tell the day I first knew or heard of it, but should say it was two or three years ago, or as much as that.

Int. 29. Where was it?

A. I could not tell that. I might have heard of it in forty places, and just as likely in one as another.

Int. 30. Did you ever see the pleadings or papers in the case?

A. No, sir.

Int. 31. Did you ever make any preparations to defend this case?

A. No, sir. When I say that I mean that individually.

(Defendant's attorney objects to this whole line of examination as inadmissible, and the attempt to examine the witness on personal matters irrelevant to the case as entirely out of order.)

Int. 32. Was you subpœnaed to appear here at Hartford last week to testify before the commissioner before whom you are testifying?

A. Well, I think I was subpœnaed to testify here before E. E. Marvin. I think that was the name.

Int. 34. Are you not sure of it—that you was subpœnaed?

A. I was served with a paper to appear in Hartford, which I did not consider a legal summons, as no tender of money was made for travelling fees and expenses.

Int. 33. Why did you not go to Hartford then?

A. I was so engaged by an appointment with several gentlemen at my place that it was almost impossible for me to leave.

Int. 34. Did you know at that time what the suit in which you were subpœnaed was brought about?

223 A. I supposed, from the reading of the summons, it was a suit pending between Jennings and Dolan. I think both those names were on the subpœna; but I did not know positively.

Int. 25. Was that all that you knew about this suit at that time?

A. About this suit you have brought here?

Int. 26. Yes.

A. I have known about the suits pending between Jennings and Dolan for some years about certain patents; that, I suppose, is what the suits are pending for. I have heard them talked about and have read about them in the papers.

Int. 27. Who is the Colladay with whom you were formerly as partner?

A. William G. Colladay.

Int. 28. Is he still living; and, if so, where does he live?

A. I don't know his residence. I suppose he is still living.

Int. 29. Is he a Philadelphia merchant?

A. I think he lives in Philadelphia.

Int. 30. Who was the company in your firm of Roop, Kibbe & Co.?

A. Well, Clinton J. Trout.

Int. 31. Is he still living?

A. Yes, sir; I think he is; he was the last I knew.

Int. 32. Is he also a merchant in Philadelphia?

A. I think he is not. I don't know.

Int. 33. When did you last hear of him?

A. I could hardly tell; probably I have heard him spoken of within a year. I think, on reflection, that Mr. Roop's son—I think his name is Joseph—had also an interest in that firm.

Int. 34. Do you know where Mr. Roop's son now is?

A. I do not.

Int. 35. When did you last hear of him?

A. Well, I have heard him spoken of within a year; but I have not seen him for a long time.

Int. 36. How long have you or your different firms been agents for Thomas Dolan, of Philadelphia?

A. I could not tell that without I look it up.

Int. 37. Tell as far as you can.

(Question objected to, as the witness has fully answered the question as far as he is able to.)

224 A. Well, you see that that would embrace time when it had no connection with this case. We were agents, I should say, most of the time from 1865; a majority of the time from 1865 up to 1868 or '70. Sometimes manufacturers undertake to sell their own goods and leave the commission-houses or deal with other commission-houses. I could not undertake to tell. This answer applies only to Philadelphia. We sold his goods as commission merchants and not as agents. We were not authorized to do anything for him but to sell the goods that he consigned us.

Int. 38. When did you see Thomas Dolan last?

A. I don't suppose I have seen Thomas Dolan within four months.

Int. 39. Did you go to Philadelphia last week after having failed to appear as required by the subpœna served upon you?

Defendant's attorney says: I object to the question, and instruct the witness not to answer it. The witness was never subpœnaed, but if the impertinent part of the question is removed I have no objection to the witness answering the question. (To the witness:) Just say I refuse to answer the question under the instruction of counsel.

A. Well, then, I refuse to answer the question under the advice of counsel.

Complainants' counsel asserts that there is nothing improper in the question put by him, but, as the witness seems willing, asks him as follows:

Counsel for defendant objects to the statement on the record of what the appearance of the witness is, and both witness and his counsel state that the question will be answered if put in a proper manner.

Int. 40. After the writ of subpœna in these cases had been served upon you, without payment of your witness and mileage fees, as stated by you before, did you go to Philadelphia?

A. I did not go to Philadelphia till after the time when I was summoned here. I went to New York on Friday after-
225 noon—last Friday—and to Philadelphia on Saturday, the next day.

Int. 41. When was the paper served upon you?

A. It was read to me the night before I was to appear here.

Int. 42. It was not handed to you at all?

A. I looked over while the officer read it. I cannot say that I took it at all.

Int. 43. Did you see any one about this case in New York?

A. No, sir.

Int. 44. Did you see any one about this case in Philadelphia?

A. No, sir.

Int. 45. Did you have any conversation about it with any one in New York?

A. The only conversation that I had in New York was with my partners. I saw no one outside. I think my partner spoke about the case—said it was on the docket.

Int. 46. The same in Philadelphia?

A. I had no conversation about it in Philadelphia. I had a partner, but there was nothing said about it there.

Int. 47. Did you see any one about this case after you had left Philadelphia and before your testimony here?

A. No; except that I met Mr. Harding at the hotel this morning a little before ten o'clock.

Int. 48. Did you meet Mr. Harding by appointment?

A. No.

Int. 49. Accidental?

A. No; my partner in New York wrote me that Mr. Harding would be up here, and if there were any points I wanted explained I could see him; he knew I would be summoned.

Int. 50. For what hour were you subpœnaed to testify to-day?

A. I think it was twelve o'clock.

Int. 51. And you met Mr. Harding at ten?

A. Yes; about that.

Int. 52. Did you have any conversation with him about this case?

A. Only in a general way.

Int. 53. Are you aware what defense has been made by the defendants in these cases?

A. I am not; no, sir.

226 Int. 54. Have you never been asked by any of the defendants in these cases or their counsel to testify therein while the defendants were taking their testimony?

A. I don't know what time they were taking their testimony.

Int. 55. Have you never been asked to testify in these cases before the last three weeks?

(Defendants' attorney objects to the question as indefinite.)

A. No; I have never been asked to testify before.

Int. 56. Have you been out of the country the last three years?

A. I have not been out of the United States in that time.

Int. 57. Have you been sick for any length of time?

A. Not many days at a time. There have been weeks when I did not feel very well, and that was the reason why I went down into the country to live. Originally my health was not very good.

Direct examination closed.

(Defendant's counsel states that he has searched the office for a book containing exhibits in this case, brought here this morning by the examiner in charge of said book, and has been unable to find it. He now calls upon complainants' counsel to state by whose authority said book was removed.)

Complainants' counsel deems the statement and request of the defendant's counsel as entirely immaterial and irrelevant to this examination.

The commissioner states that the book referred to was brought to his office by Mr. Betts, the examiner, this morning, and remained here till about 1.45 p. m., when Mr. Betts took the same book away with him from the office, saying at the same time to this commissioner that the party at whose request he had brought it here had given him leave to take it away again, stating to Mr. Betts that there would be no further use for it. It was a large book,
227 some 15 inches square and 8 or 10 inches thick, containing woolen or worsted samples of various fabrics between the leaves, and that is all I know about it.

Counsel for defendant here gives notice that he will move to strike out the deposition of this witness as irrelevant, immaterial, and on account of the objections in the body of the testimony, and that the deposition is not a subject-matter of rebuttal. Due notice will be given complainants' counsel of the date when said motion will be made.

No cross-examination.

H. R. KIBBE.

Subscribed and sworn to before me this 29th day of May, A. D. 1884.

E. E. MARVIN,
*Clerk U. S. Circuit Court, District of Connecticut.*

229 BROADWAY, *June* 16, 1884—2 p. m.

Met pursuant to notice.

Present: Antonio Knauth, Esq., of counsel for compl'ts.

At the request of complainants' counsel the commissioner certifies that the book of samples containing "Exhibit Dolan No. 3," which

he delivered to complainants' counsel, as above stated, enclosed and sealed, has been redelivered to the commissioner, with said enclosure and seal unbroken.

Complainants' counsel now closes the case.

228 "COMPLAINANTS' EXHIBIT MARRIOTT AFFIDAVIT." S. R. B., U. S. Comm'r. March 27, '84.

United States Circuit Court, Southern District of New York. In Equity.

JENNINGS
*vs.*
DOLAN.

JENNINGS
*vs.*
KIBBE.

A. G. JENNINGS and WARREN P. JENNINGS
*vs.*
THOMAS DOLAN. } No. 2.

SOUTHERN DISTRICT OF NEW YORK, *County of New York,* } *ss:*

WILLIAM MARRIOTT, being duly sworn, deposes and says:

I am sixty-two years of age and am a member of the firm of Marriott & Cook, manufacturers of knit goods, nubias, etc., having our manufactory at Stoughton, Norfolk county, Massachusetts, and for forty-three years I have been engaged in the manufacture of knit goods.

In August, 1880, I myself, in connection with Henry Crine, of Boston, who sold knit goods for me, took a license from Messrs. A. G. Jennings and Warren P. Jennings, the complainants in this suit, under design letters patent No. 10448, dated February 12, 1878, and letters patent No. 218,032, dated July 29, 1879, to make and sell nubias and scarfs of the single and double pillar threads, made under said letters patent, and we agreed to pay a royalty for said patent privilege to the Messrs. Jennings, and we thereafter
229 manufactured and sold nubias made in accordance with said letters patent and paid royalty to the Messrs. Jennings therefor.

In May, 1881, my firm having then become Marriott & Cook, this new firm entered into an agreement with Messrs. A. G. & Warren P. Jennings, by which we obtained the right to make and sell nubias under said design letters patent No. 10448 and said letters patent No. 218,032 during the years 1881 and 1882. We acknowledged the validity of said letters patent and agreed to pay royalty to the Messrs. Jennings upon all nubias made in accordance with said patents or either of them and to keep books of account and make statements of the number of nubias sold by us, made in accordance

with these patents, and to mark such nubias with the dates of the patents and the word "patented."

We have complied with the terms of this agreement and have manufactured and sold large numbers of nubias made under these patents and have paid to the Messrs. Jennings royalties therefor in accordance with said agreement.

If other parties are permitted to infringe these patents and put upon the market goods containing the patented features and without paying a royalty to the Messrs. Jennings they can undoubtedly undersell us in the market, and we shall be compelled to give up manufacturing these patented fabrics and cease paying royalty to the Messrs. Jennings.

The nubia marked with the name of A. G. Jennings and the words "Exhibit Jennings' Double Pillar Nubia," and which I have carefully examined, is identical in construction and appearance with the nubias made by me and sold by Mr. Henry Crine and with the nubias made and still being manufactured by the firm of Marriott & Cook, as licensees under the Jennings patents above mentioned, and on which nubias we have paid royalties to the Messrs. Jennings, as I have stated.

I have had an experience of over forty years in the manufacture and sale of knit goods of various kinds and never saw any knit fabrics of the construction or appearance of the fabrics made under and in accordance with these Jennings patents and of that "Exhibit Jennings' Double Pillar Nubia," nor did I ever see any knit fabrics or nubias of the construction or appearance of the two nubias marked in this case as "Complainants' Exhibit Dolan Nubia A" and "Complainants' Exhibit Dolan Nubia B," and which I
230 have carefully examined, until the Messrs. Jennings put on the market their nubias like "Exhibit Jennings' Double Pillar Nubia."

(S'g'd) WILLIAM MARRIOTT.

Subscribed and sworn to before me this eighth day of December, 1881.

[L. S.] (S'g'd) WILLY G. E. SCHULTZ,
*Notary Public, Kings Co., N. Y.*

Certificate filed N. Y. Co.

(Endorsed:) Filed Feb'y 21, 1882.

U. S. OF AMERICA,
*Southern District of New York,* } ss:

I hereby certify that the foregoing printed matter contained on pages 21, 22, and 23 and embraced in folios 62 to 68 is a true and correct copy of an affidavit of William Marriott on file in my office in the suit of Jennings *et al. vs.* Dolan.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

232 UNITED STATES PATENT OFFICE.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS, of Brooklyn, N. Y.

*Improvement in Lace Purling.*

Specification forming part of Letters Patent No. 218,032, dated July 29, 1879; application filed December 31, 1878.

To all whom it may concern:

Be it known that we, Abraham G. Jennings and Warren P. Jennings, of the city of Brooklyn, county of Kings and State of New York, have invented a new and improved lace purling, of which the following is a specification:

This invention relates to an improved reticulated purling; and has for its object to so construct the same that the laterally-projecting loops will be held in proper flat positions while and after the pillars are joined in the reticulated form.

The invention consists in binding the laterally-projecting loops of each pillar by two rows of meshes, all as is hereinafter more fully described.

The invention also consists in providing our improved purling with fringes, as hereinafter specified.

In the accompanying drawings—

(Here follows diagram marked page 231.)

Figure 1 represents a face view of our improved reticulated lace fabric or purling. Fig. 2 is a diagram showing the mode of joining the pillars and of forming the fringes.

Similar letters of reference indicate corresponding parts in all the figures.

The letters A A, &c., represent the pillars of the improved lace fabric. Each pillar is composed of laterally-projecting loops *b b*, that are joined and held in place by double rows of meshes *a a*. The pillars are joined at proper intervals to form a reticulated fabric, as clearly shown in Fig. 2. The loops *b* are knit into the meshes *a*, and project at both sides therefrom at equal or suitable distances. The double row of meshes *a a* in the pillars will firmly hold the loops *b* in a flat position, to wit, in a plane parallel substantially to the face of the meshes.

Were it not for the multiple row of meshes in each pillar, the loops *b* would turn up, and thereby destroy, to a great extent, the beauty of the fabric which it is desired to produce by this invention.

The two rows of meshes of each pillar A may be made to adjoin each other, as shown in the drawings, or they may be placed at a distance apart, in which case the threads forming the loops *b* will traverse the space between the two rows.

The above-described fabric may be made with fringes *c*, of the same construction as the remainder of the fabric. These fringes are formed by extending the pillars beyond their points of contact, as clearly shown in Fig. 2.

Instead of using two rows of meshes, *a*, on each pillar, three or more rows may be used.

The fabric can be made on every kind of warp-lace machine—such, for example, as that described in letters patent No. 92995, dated July 27, 1869. The pillars are produced on the knitting-needles of the machine in the ordinary manner, and are made to cross and form the reticulated fabric, the same as is done in the well-known manufacture of hair-nets on such machines.

The pillars, when of proper length, are taken off the needles that formed them by the laterally-sliding guide-bars, and deposited on the next set of needles, on which the adjoining pillar was previously formed, which in turn is taken off its needles by another guide-bar, all in the ordinary manner of making reticulated fabrics on warp-lace machines. The character of the machines on which such fabric may be made is well known, and a description of the machine used is to be found on page 1243 Knight's Mechanical Dictionary, sub-article "Warp-Net Machines," except that in making the pillar and purl fabric several beams and guide-bars are used, as above described.

The lace-purl fabric above described is made on a warp-lace machine. The threads for the meshes *a* constitute the warp-threads. These and the purl-threads for the loops *b* are on two separate warp-beams. The warp-threads *a* pass from the beam to two guide-bars, that lay them onto the barbed needles, and they are worked straight down, forming the net. The purl-threads *b* are threaded through one or more guide-bars, that cross and inlay the warp-threads at regular intervals, making the purl.

On the warp-machine the warp-threads work on every second or third needle, making the pillars, which pillars are made to cross and join and form the net or mesh, and this is done according to the size of mesh wanted. There are one or more empty needles be-
233 tween each warp-pillar. The purl warp-threads traverse on the empty needles on each side of their pillar-threads across the warp-threads, and, working on empty needles, are pushed off by the sinkers, thus making the purl, which is held in its place by the pillar-threads that it has crossed and inlaid; but the fabric may as well be made on a bobbinet or twist-lace machine, in which the purl-threads will be tied to the warp-threads by the bobbin-thread, an additional bobbin-thread being required to hold the purls extended, which additional thread is afterward drawn out.

We claim as our invention—

1. The reticulated lace purling composed of pillars A A, each pillar consisting of laterally-projecting loops *b b*, and of two or more continuous rows of meshes, whereby the loops are held flat, substantially as specified.

2. The reticulated lace purling composed of pillars A A and of fringes *c c*, the fringes being continuation of the pillars, substantially as specified.

ABRAHAM G. JENNINGS.
WARREN P. JENNINGS.

Witnesses:
F. v. BRIESEN.
A. v. BRIESEN.

234 UNITED STATES PATENT OFFICE.

WARREN P. JENNINGS, of Brooklyn, New York.

*Design for a Fringed Lace Fabric.*

Specification forming part of Design No. 10448, dated February 12, 1878; application filed January 9, 1878. (Term of patent 7 years.)

To all whom it may concern:

Be it known that I, Warren P. Jennings, of Brooklyn, Kings county, New York, have invented a new and original design for fringed lace fabric, of which the following is a specification.

The accompanying photograph illustrates a face view of my new design.

This invention relates to a new looped fringe applied in series to lace fabrics.

A represents the lace fabric of usual kind. B B are the disconnected fringes applied thereto. Each fringe B is formed with loops at both sides of a central stem or rib, along its entire extent, as shown, thus producing a peculiar, full, and yet loose effect. The fringes are arranged in series of rows and suspended from the lace fabric.

I claim—

The design for a lace fabric provided with disconnected doubly-looped fringes B, having loops at both sides of a central stem or rib, substantially as shown.

WARREN P. JENNINGS.

Witnesses:
TH. JUNCKE.
A. E. JENNINGS.

235 U. S. Circuit Court, Southern District of New York. In Equity.

A. G. JENNINGS *et al.*
*vs.*
KIBBE, CHAFFEE, SHREVE & CO. *et al.* } No. 2216.

SAME
*vs.*
THOMAS DOLAN } No. 2196.

Testimony taken on behalf of defendants in 67th Rule of the Supreme Court of the United States (as amended) before Samuel Bell, United States commissioner, by consent.

PHILADELPHIA, PA., 901 WALNUT STREET,
11 a. m., *February 7th, A. D.* 1883.

Met pursuant to notice.

Present: Samuel R. Betts, Esq., counsel for complainant; John R. Bennett, Esq., counsel for defendants.

HENRY A. TRUITT, a witness called for and on behalf of defendants, who, being first duly sworn, says:

Q. 1. What is your name, age, residence, and occupation?

A. Henry A. Truitt; age, 37; residence, No. 2000 North Twelfth street, Philadelphia; occupation, manufacturer.

236 Q. 2. Do you know Thomas Dolan, the defendant, and the firm of Thomas Dolan & Co., of which he is the senior member?

A. I do.

Q. 3. Have you ever been in the employ of Thomas Dolan & Co.; and, if so, for how long a period?

A. I have; for nearly 21 years.

Q. 4. State precisely when you commenced work for Thomas Dolan & Co. and how long you remained with them.

A. From the year 1861—April 1, 1861—until December 30, 1882.

Q. 5. What was the business of Thomas Dolan & Co. during the time you were in their employ?

A. At first they manufactured hosiery and fancy knitted goods; afterwards shawls and knitted goods, and then they went to manufacturing cloth, the knit-goods department still continuing. About two years ago they sold out their hosiery department and this year they closed out their fancy knit-goods department, and now they manufacture alone the various kinds of cloth.

Q. 6. How were you employed during the time you were working for Thomas Dolan & Co.?

A. I went there first as an errand boy; packed and shipped goods; worked in the wareroom until I was about 21 years of age. I think I was 22 years of age when I began to have charge of the knit goods more particularly—that is, generally, as gradually as my responsibilities increased, up to the year 1875—I do not remember the year exactly, since which time I have had entire charge of the fancy knit-goods branch of the business—that is, ever since 1875 or 1876.

Q. 7. When did you first become connected with the fancy knit-goods department of Thomas Dolan & Co.'s business?

A. I was in that department—that branch of the business—I have been there from the time I went there until I left.

Q. 8. During the time you were connected with the fancy knit-goods department of Thomas Dolan & Co. were your duties such as to make you familiar with the various styles of fabrics manufactured in that department?

A. They were.

237 Q. 9. When did you first have duties assigned you whereby you became familiar with the various fabrics made in the knit-goods department?

A. In 1866; or about the year 1866.

Q. 10. From that time until the time of leaving Thomas Dolan & Co., December, 1882, did you know of the various styles of fabrics made in your department?

A. I did.

Q. 11. Examine the knitted fabric marked "Exhibit Dolan No.

3," found in book marked "Samples to 1869, Thomas Dolan," and state what, if anything, you know in connection with the same.

A. That sample was designed by Henry Boot, an employee of Thomas Dolan & Co., on or about the year 1866–'68, and manufactured at that time on our warp looms or on the warp looms there. It was manufactured and made up into various articles and sold by, or at least sent to, Root & Kibbe, of Philadelphia—I think that is the name of the firm—and Townsend & Yale, of New York.

This sample is one that was made at that time and was placed in that book by me. It has been taken out by me for reference and placed back again in that book by me. It is a piece off the original fabric.

I said it was designed by Mr. Boot. I did not see him meshing it or designing it, as we called it, but he designed all the fabrics that were made there and we had no other designer; but I did see him getting the loom to work with it on this fabric; saw the fabric while on the loom and in the wareroom.

Its character was designated by me. I gave it the name of "seaweed," so as to distinguish it from other fabrics, as it struck me as resembling that more than anything else I thought of at the time.

Q. 12. When did Thomas Dolan & Co. commence manufacturing fabric such as "Exhibit Dolan No. 3?"

A. As near as I can recollect, in 1868; 1866 or 1868; I am not positive.

Q. 13. How long did they continue to manufacture such fabric?

A. From that time on to 1870 or 1872; not later.

Q. 14. What quantity of such fabric did Thomas Dolan & Co. manufacture?

238 A. There was a considerable quantity of it made.

Q. 15. For what purpose was it made and how used?

A. It was made for nubias, hood tops, the outside of cloaks, with another fabric under, and in strips for trimmings.

Q. 16. Can you name any one who wove such fabric upon the loom?

A. Cornelius Jackson and one or two others whose names I do not recollect.

Q. 17. In what part of the factory was such fabric manufactured during the period between 1868 and 1872?

A. Made in the old building, or the first building erected on that ground, which faces Oxford street and stands back, I suppose, sixty feet from the sidewalk; what was known as the old warp-loom shop.

Q. 18. When was your attention first called to such fabric and by whom?

A. It naturally came under my observation from being in that department and handling the work.

Q. 19. You have stated that the sample specimens "Exhibit Dolan No 3" is a piece of the original fabric made at that time. How do you know that fact?

A. Because that was preserved with other samples made before and in the year 1869, it being pasted on paper and the paper which had a long tab end and cut to suit and filed on regular paper files.

In 1869 I took that, with other fabrics, and pasted them in a large book like that sample book, so as to preserve them from being lost, as a great many of our samples previous to that time had been lost.

Q. 20. At that time was it a part of your duties to take samples of the different goods that were made up by Thomas Dolan & Co. and see that they were properly placed away for future reference?

A. It was.

Q. 21. Did you take the piece of fabric "Exhibit Dolan No. 3" after it was made?

A. I did.

Q. 22. And yourself place it on the slip to which you have made reference as a sample to be preserved?

Mr. BETTS: (Objected to as leading.)

239 A. I am not positive that I pasted it on the paper, but I had charge of the paper, and I either done it or had it done, but I did put it in that book.

Q. 23. And when did you put it in that book?

A. In about the year 1869 or 1870, with a great many other samples, and in making up these books; we could not do it all at once, but as we had time. It might have been the latter part of 1869 or the early part of 1870, but these books were all bought in 1869, so as to have all our samples put in them.

Q. 24. What, if anything, does the "mark on the cover of the book marked Samples to 1869, Thomas Dolan," in which I find "Exhibit Dolan No. 3," indicate?

A. It indicates that the samples in that book were made in that year or previous.

Q. 25. Was that book so marked at the time the sample "Exhibit Dolan No. 3" was placed in it?

A. It was marked before the samples were placed in it.

Q. 26. Can you not swear positively that the fabric "Exhibit Dolan No. 3" contained in the sample book marked samples to 1869, Thomas Dolan, was manufactured prior to 1870 and placed in that sample book in the year 1869 or the fore part of 1870?

Mr. BETTS: (Objected to as leading.)

A. I can.

Q. 27. Since placing the sample fabric "Exhibit Dolan No. 3" in this book in whose possession has it been and what use, if any, has been made of it?

A. It has been in my possession and it has been used as a reference book for making new designs or reproducing old ones.

Q. 28. Have you had any occasion to refer to this sample book since the placing of the samples in there in 1869 or 1870; and, if so, for what purpose and how often?

A. I have; have referred to it in getting out new fabrics frequently.

Q. 29. Have you had occasion to refer to it as often as once a year since then?

Mr. BETTS: (Objected to as leading.)

240 A. Yes, sir; oftener; some years probably twice, three, and a dozen times, and probably some years from once or twice to a dozen times, I should say, as the case required.

Q. 30. State what was the object in placing the sample of each fabric manufactured by the firm of Thomas Dolan & Co. in the book such as the one before you.

A. So as to preserve them in uniform shape and have them for reference when needed.

Q. 31. Has it been the practice since the year 1869 to preserve specimens of all the fabrics manufactured by Thomas Dolan & Co. and file them in a sample book?

A. It has.

Q. 32. Are there any samples contained in the book marked "Samples to 1869, Thomas Dolan & Co.," that were not manufactured prior to 1870 and put in that book at or about that time?

A. I believe not.

Q. 33. Did it continue to be one of your duties up to the time of leaving Thomas Dolan & Co., in 1882, to preserve the samples of the different fabrics made to see that they were properly placed in the books?

A. It did.

Q. 34. State whether or not any fabrics such as "Exhibit Dolan No. 3" was manufactured upon the loom in any special form or shape; and, if so, what it was.

A. It was made in large sheets and in strips for making into nubias and in widths for nubias.

Q. 35. State the condition of such fabrics that was made into shape and form for nubias as it came from the loom.

A. It was in strips and cut off into nubia lengths after coming into the wareroom.

Q. 36. What do you mean by "strips" and describe the nubias after they were separated from the body of the fabric?

A. By "strips" I mean the proper width for a nubia; what we determine the proper widths for nubias. Some were made with an open, disconnected end and afterwards with tassels on the end, made up with a tassel, as just about this time tassels for nubias were introduced by Thomas Dolan & Co. I might say a tassel-end nubia.

Q. 37. Describe more fully what you mean by the language "open, disconnected end."

241 A. I don't know how to give you a better description.

Q. 38. You have stated that some of the nubias made from the fabric "Exhibit Dolan No. 3" were with open, disconnected ends. Were they made that way upon the loom?

(Objected as leading.)

A. Yes, sir.

Q. 39. Now, please describe how it was they were so made upon the loom?

(Same objection.)

A. After the nubia was run the proper length the loom was

changed so as not to connect the patterns all the way across, but leave them separate to act as a finish.

Q. 40. That is, the fabric was run straight out and not connected together in the form of a mesh?

Mr. BETTS: (Objected to as leading.)

A. Yes, sir.

Q. 41. You have testified that you took the samples "Exhibit Dolan No. 3" out of the book. When was that and for what purpose did you do so?

A. That was about the year 1879; I think it was in 1879 or 1880. I took it out for reference, as I frequently did other samples at various times, so as not to carry that book up into the mill from the wareroom.

Q. 42. Did you take that sample out of the book at that time?

A. I did.

Q. 43. How long did you keep it out of the book?

A. I cannot state positively; might have had it out two or three weeks.

Q. 44. At the time you had it out of the book in whose possession was it?

A. Part of the time in the wareroom, in the table drawer; part of the time in the loom shop; it was upstairs.

Q. 45. And you had it there for the purpose of reproducing the fabric?

A. I did.

242 Q. 46. Did you place that fabric back in the book as it now is?

A. I did.

Q. 47. Does that sample occupy the same position in the book as it did when you put it in there originally, in 1869?

A. It does.

Q. 48. And the sample has never been out of that book except for the two or three weeks in reference to which you have already testified?

A. It has not.

Q. 49. Prior to removing that sample from the book for the purpose of taking it to the room for reproducing the fabric, did you ever examine the sample?

A. I have examined the book and seen the sample there.

Q. 50. State whether or not during the period from 1869 up to the time of taking it out of the book, in 1879 or 1880, you knew of the existence of the sample in that book?

A. I did.

Q. 51. Is your knowledge of knitted fabrics sufficient to enable you to testify positively that fabric of similar construction as the sample "Exhibit Dolan No. 3" was manufactured by Thomas Dolan & Co. at the time stated by you?

Mr. BETTS: (Objected to as leading.)

A. It is.

Q. 52. After the fabric "Exhibit Dolan No. 3" was taken from the loom what was done with it?

A. It was brought into the wareroom, where it was cut, if necessary, into different shapes and given to the sewing girls to make up and finish.

Q. 53. How was the greater part of this fabric used?

A. The greater part of it was used for the tops of hoods—to trim hoods and circulars and the hoods of the circulars. We used to make "Red Riding Hood," we called it—something of that kind—a circular. This fabic was used for the outside fabric, while we used a plainer fabric for the lining.

Q. 54. In the manufacture of knitted fabrics is it or not a common practice to extend the fabric cut without joining the parts together into meshes so as to form a fringe or finish?

By Mr. BETTS: Objected to as immaterial and leading.

243 A. It is.

Q. 55. How long, to your knowledge, has that been a common practice?

(Same objection.)

A. It has been a common practice for some years; I believe previous to 1866. In the early history of their business their goods were made that way, and at or about the time 1870 Mr. Dolan introduced the tassel nubia, and this tassel was made until 1876 or thereabouts, when they made them with the extension of the fabric or again extended into a fringe.

Q. 56. That is, running the fabric out straight without joining it together so as to form a fringe?

By Mr. BETTS: (Objected to as leading.)

A. Yes.

By Mr. BENNETT: Defendants' counsel offers in evidence book marked "Samples to 1869, Thomas Dolan," containing the sample fabric marked "Exhibit Dolan No. 3."

Q. 57. You have referred to Henry Boot as having been employed by Thomas Dolan & Co. during that period. State who Mr. Boot was, and when he entered the employ of Thomas Dolan & Co., and how long he remained there, and what has become of him.

A. He was an Englishman. He came there a few years after I did, I believe, and remained there until the year 1875. I think our books will show that, and I am informed by his son-in-law that he very shortly after that entered the employ of Jennings & Co.

Mr. BETTS: (I object to the latter statement of witness as hearsay testimony.)

Q. 58. In what capacity was Mr. Boot employed by Thomas Dolan & Co.?

A. As designer and foreman.

244 Q. 59. He designed the fabrics "Exhibit Dolan No. 3" contained in books marked "Samples to 1869, Thomas Dolan?"

By Mr. BETTS: (Objected to as leading.)

A. He did.

Q. 60. Did you ever see Henry Boot at work upon or manufacturing any fabric such as "Exhibit Dolan No. 3?" If so, when first?

A. I have; on or about the time mentioned, from 1866 up to 1870.

Q. 61. Who, if any one, had charge of the manufacturing of the fabrics such as "Exhibit Dolan No. 3?"

A. I have just stated Mr. Boot superintended the room and was the only one that had charge of the room. I might add that a Mr. Salmon, who was the superintendent of the mills, had the warps ordered, and he or Mr. Wale, who at that time prepared or had charge of the warps and spools, may have had something to do in connection with it in preparing the warp.

Cross-examination by Mr. BETTS:

Cross-Q. 62. Did you make an affidavit for the defendant in the case of A. G. Jennings *et al. vs.* Kibbe and others?

A. I did.

Cross-Q. 63. About what date was that affidavit made?

A. Previous to the suit. I forget the date. I mean previous to the decision.

Cross-Q. 64. Did you make affidavits in the suit of Jennings and others *vs.* Thomas Dolan in opposition to the motion for preliminary injunction sworn to respectively on December 14th, 1881, and December 15th, 1881, before R. S. Child, Jr., notary public?

A. I believe I did.

Cross-Q. 65. Please give me the year when Cornelius Jackson went into the employ of Thomas Dolan & Co.

A. In 1869 or 1870.

Cross-Q. 66. Give me the names of all the persons in the employ of Thomas Dolan & Co. who would know as to whether fabrics like "Exhibit Dolan No. 3" was made at Thomas Dolan's factory.

245 A. I will give you those whom I can remember, but I may state here that a number of years ago we changed our men operatives on these looms and girls were employed, and a great many of them have been out of the employment of the concern for some time, so I cannot recollect all of the names. Those whom I should judge would know would be Thomas Dolan, Henry Boot, Cornelius Jackson, Charles H. Salmon, William McDevitt, Edward McDevitt, George McDevitt, Samuel Martin, Mr. Beck (I forget his first name), Mary Kimball, Mrs. Douglass, whose name was then Sarah Prathworth, and a number of others whose names I cannot now recall.

Cross-Q. 67. Can you give any names besides those you have mentioned of persons who would know of the manufacture of this exhibit?

A. George Moseley, and there are and might possibly be others who I cannot recall their names at this time.

Cross-Q. 68. In what department did the employees work who

would know of the manufacture of fabric like "Exhibit Dolan No. 3?"

A. They would work in the warp and sewing room and in the warp-loom shop.

Cross-Q. 69. How many warp looms were you running in 1869 and 1870?

A. I don't remember. There were a number of looms there at the time and a purchase of additional looms, but I cannot remember the date of such purchase.

Cross-Q. 70. Was that purchase made before or after the manufacture of "Exhibit Dolan No. 3?"

A. I cannot say.

Cross-Q. 71. In what year did you begin to use girls instead of men to work in the warp-loom department?

A. I cannot remember the date of it. I would have to refer to the books to ascertain.

Cross-Q. 72. Give the date as near as you can now.

A. Probably 1872 or 1873.

Cross-Q. 73. Would your books show definitely?

A. I think the pay-rolls would.

Cross-Q. 74. In regard to the other fabrics in this book, marked Samples to 1869, Thomas Dolan, besides "Exhibit Dolan No. 3," in what department were they made?

(Objected to as irrelevant.)

246 A. Some were made on hand frames in another part of the building, some were made on the double-ribbed looms in still another part of the building, and some were made on what we called circular frames in another room, as near as I can recollect—in the basement, under the double-ribbed looms—and some were made on the second floor of the weaving-room.

Cross-Q. 75. Were any made on warp looms as you have stated "Exhibit Dolan No. 3" was?

(Objected to.)

A. There were others.

Cross-Q. 76. Which ones?

A. I want to say there are some fabrics that can be made on a warp loom that are double-ribbed, but I will point to such.

Cross-Q. 77. Could the "Exhibit Dolan No. 3" be made on anything but a warp loom?

A. I would say in regard to "Exhibit Dolan No. 3" no, not to my knowledge.

Cross-Q. 78. Point out those that could be made only on a warp loom such as you had, and mark them with your initials and the date.

A. I have marked with my initials and the date and drawn a line around 46 samples in the book marked Samples to 1869, Thomas Dolan. Those that I have so marked are what I believe were made on a warp loom, but it will require an expert in such matters to accurately point them out. I have marked two samples Nos. 35

and 36 that I believe lately it is possible to construct on a double-ribbed machine, but at the time they were made by us that it was not possible to construct them on such a machine.

Cross-Q. 79. Were not the warp looms at Dolan's all in one room during the years of 1868, 1869, and 1870?

A. I believe they were.

Cross-Q. 80. State as near as you can how many there were of such looms at that time.

A. There were 18 looms.

Cross-Q. 81. Did you yourself put every one of those samples you have identified as capable of being made only on a warp loom in this book, Samples to 1869, Thomas Dolan?

A. I did, I believe.

247 Cross-Q. 82. Did any one help you in arranging the samples in that book; and, if so, who, and how?

A. No person.

Cross-Q. 83. Can you give me the date of the manufacture of each one of those samples you have marked and numbered?

A. I cannot; only that they were made previous to the year 1869 or 1870.

Cross-Q. 84. And you only know that by finding them in the book now. Is that it?

A. No, sir; I know that because previous to that time, as I have before testified, these samples were preserved on slips of paper and pay files, and on a great many of them will still be found the original papers—for instance, such as the one I have marked the number 28, and various other samples on which you see still remaining the original paper. In a great many cases the paper was taken off and the sample pasted in a book; in a great many the samples were put in the book with the paper on, as you will see. Most of these papers were prepared by me for reference.

Cross-Q. 85. Are all the samples that were put in that book still in it?

A. No, sir; they are not all in; some have been taken out.

Cross-Q. 86. For what purpose?

A. For reference, for examination.

Cross-Q. 87. Taken out and not put back in the book?

A. Yes, sir; some of them.

Cross-Q. 88. Who had access to the book and authority to take out samples?

A. Mr. Dolan, Mr. Salmon, and the foreman, whoever he might be; part of the time Henry Boot and the remainder of the time Cornelius Jackson was the foreman.

Cross-Q. 89. Do you mean to testify that you have a distinct recollection of each of the samples in that book, so that you can swear to each one that you put it in yourself?

A. I can say that it would be impossible almost for anybody to put a sample in that book without my knowing it—that is, I do not believe any one put samples in there but myself; it was no one's business to do it and nobody disturbed the books but myself, as a general thing.

248 Cross-Q. 90. The question is, do you claim to have such a distinct recollection of each and every sample in that book that you can swear that you put it in yourself as to each and every sample at the time you made up that book?

A. I do not claim to be so perfect as that.

Cross-Q. 91. So perfect in your memory?

A. I mean in my memory.

Cross-Q. 92. Were those samples numbered in such a way as to fix their location, so that when one had been taken out it would necessarily be put back in the same place?

A. Possibly not, in all cases.

Cross-Q. 93. Were any of them numbered?

A. Some were numbered and a great many were not; for instance, there are samples in that book that is on a separate piece like No. 28 had a number on it before it was put in that book; the number of articles that it was made up into; only one article, it would not be all numbered, only one article—that would be all that was necessary; every one of those had a number and a great many which have not that paper on had a number, but when they were gathered up to be placed in this book from our files and drawers the numbers were not all retained, as we simply wished to retain a sample of the fabric.

Cross-Q. 94. Then there was nothing to fix the exact location in the book of any given sample?

A. No; not like the books were made up of recent date, as we then made goods, and the samples had their place in the book.

Cross-Q. 95. You were in the habit of taking samples out of the books of more recent years, were you not?

A. Yes, sir.

Cross-Q. 96. Into whose hands did these samples you took from those books for comparison or working with go?

A. They were in mine, or might have been in the hands of Mr. Salmon, Mr. Dolan, or the foreman.

Cross-Q. 97. Is there anything in this sample book marked Samples to 1869, Thomas Dolan, which would indicate the quantity of the goods with the styles that were made up?

A. No, sir.

Cross-Q. 98. Is there anything in any of your books so connected with this sample book that it would show the exact quantity that were made of each sample?

249 A. Not now; if all the numbers originally given to the samples had been retained, as I have referred to, on these pieces of papers there might have been.

Cross-Q. 99. The "Exhibit Dolan No. 3" is not mounted on one of those pieces of paper, is it?

A. No, sir.

Cross-Q. 100. Are many of these samples in the book marked "Samples to 1869, Thomas Dolan," samples of which no quantity of goods to speak of were made, but were made by the designer to be submitted?

A. There may have been some of that kind, but on looking over the book I find very few.

Cross-Q. 101. You cannot tell the quantity of goods that were made up by Thomas Dolan & Co. in accordance with each one of the samples in that book, can you?

A. I can tell, generally, whether there was much or little or none in some cases, but not all.

Cross-Q. 102. You cannot tell how much, can you?

A. Not the exact quantity.

Cross-Q. 103. Can you tell who the goods, made in accordance with the various samples, were sold to?

A. I cannot. We never knew to whom they were sold; they were all consigned.

Cross-Q. 104. Can you tell to whom they were consigned?

A. To the best of my recollection, Townsend & Yale, of New York, and Root, Kibbe & Co., of Philadelphia.

Cross-Q. 105. Those two were all your consignees?

A. J. M. Billings, of New York, was at one time. The house is now Kibbe, Chaffee & Co.; they at one time sold our goods, but have not for a long period.

Cross-Q. 106. Is that Kibbe, of Root & Kibbe, the same Kibbe who is now a member of the firm of Kibbe, Chaffee, Shreve & Co.?

A. I believe he is.

Cross-Q. 107. The firm of Townsend & Yale is the present firm of Townsend & Yale, of New York?

A. It is, I believe.

Cross-Q. 108. During what years were Townsend & Yale your consignees?

A. From the time I went with Dolan to two years ago; I forget what year.

250 Cross-Q. 109. Were Root & Kibbe your consignees at the same time?

A. Yes, sir.

Cross-Q. 110. During what years?

A. I cannot recollect that; I would have to refer to the books to find out.

Cross-Q. 111. Give me a general idea from when to when?

A. I can only tell by referring to the dates in the books; it was not my business to attend to this thing at all. I never bothered with that.

Cross-Q. 112. Were Root & Kibbe your consignees between the years 1868 to 1875.

A. Root & Kibbe, I believe, or the firm on Bank street, were the agents of the firm from the time I went there until the firm changed, and I forget the name of the firm after that. Afterwards the firm was Colliday, Trout & Co. It was Root, Kibbe & Co., and then another firm whose title I do not recollect filled in the period, and afterwards the firm became Colliday, Trout & Co., but the dates I am not familiar with unless I refer to the books.

Cross-Q. 113. Between the years 1868 and 1875, if you have made any quantity of goods for sale of that kind of goods, the goods would

have passed through the hands of Townsend & Yale, of New York, would they not?

A. Yes, sir; I should judge they would, but there was frequently large quantities which would go to Philadelphia trade which would not go to New York trade, and we frequently sent goods to New York which afterwards would be sold to the Philadelphia market, and sometimes it would be just the reverse.

Cross-Q. 114. Did you yourself ever see any of that fabric, "Exhibit Dolan No. 3," made up?

A. I have.

Cross-Q. 115. In what form?

A. Into various forms.

Cross-Q. 116. Into what forms?

A. Into nubias, hood tops, trimmings, and outside of cloaks or the outside of the double cloak.

Cross-Q. 117. Can you say to whom those goods were consigned?

251 A. I believe to Root & Kibbe, of Philadelphia, or to Townsend & Yale, of New York.

Cross-Q. 118. Mr. Boot himself did not run the loom which would make the goods they manufactured it on?

A. He designed it on a sample loom and started the looms on the pattern when the loom would first get to work. When he got the pattern he would start the loom.

Cross-Q. 119. The work he did in knitting there was only on the sample loom?

A. Yes, sir; the knitting work he generally done.

Cross-Q. 120. And he made the samples which were submitted to the firm to see whether they would be manufactured on a larger scale?

A. He did.

Cross-Q. 121. The mere fact of a sample being in this book, "Samples to 1869, Thomas Dolan," does not show that they were made except on a sample loom, does it?

A. Well, not positively. In some cases it might be a sample in that book; in other cases it would be where there has been large quantities made.

Cross-Q. 122. When you speak of fabrics like "Exhibit Dolan No. 3" what do you refer to—appearance, construction, or what?

A. It depends upon the principal point in conversation.

Cross-Q. 123. Well, you have spoken of having made up fabrics which were like "Exhibit Dolan No. 3." What do you mean by the word "like?"

A. I mean to say fabric is like that fabric with double pillar and in every way having the character of it and of the same construction.

Cross-Q. 124. Did you ever make similar fabrics with a single pillar prior to 1875?

A. We have prior to 1875.

Cross-Q. 125. Is there any sample of such fabric in this book, "Samples to 1869, Thomas Dolan?"

A. There are.

Cross-Q. 126. Will you show them to me?

A. I have marked one No. 28 and another No. 30.

Cross-Q. 127. Nos. 28 and 30, which you have just pointed out, is what you call "seaweed pattern?"

A. They were known as "seaweed"—that is, after we had
252 made them awhile I gave them that name just nominally, so as to distinguish them.

Cross-Q. 128. And "Exhibit Dolan No. 3" you also called seaweed?

A. Yes, sir.

Cross-Q. 129. Was Nos. 28 and 30 you have marked made in any quantity?

A. Yes, sir.

Cross-Q. 130. Were they made up into hoods, shawls, and articles of that kind?

A. They were made up just similarly to the other fabrics.

Cross-Q. 131. Who designed those fabrics Nos. 28 and 30?

A. Henry Boot.

Cross-Q. 132. And those two numbers have what you call a single pillar as distinguished from the double pillar?

A. They have a single pillar; yes, sir.

Cross-Q. 133. Who made these Nos. 28 and 30 on the looms?

A. In answering that question I would say either Mr. Jackson or some of the other men in the room whom I have named, or probably one or two who have since died.

Cross-Q. 134. Do you know of anybody you can mention except Mr. Jackson that made them?

A. William McDevitt, and I think one of his brothers; his brother George, and probably Nathaniel Martin; I am not sure.

Cross-Q. 135. Did Mr. Boot design Nos. 28 and 30?

A. He did.

Cross-Q. 136. At what time?

A. About 1866 to 1868; 1866 is the time I would be most certain of.

Cross-Q. 137. Can you produce a written memorandum or entry of any kind that will show that "Exhibit Dolan No. 3" was made at the factory of Thomas Dolan & Co. and the exact date when it was made?

A. No, sir.

Cross-Q. 138. Can you produce any made-up article or piece of fabric, besides the sample, made at the factory of Thomas Dolan of exactly the same construction as "Exhibit Dolan No. 3" prior to 1875?

A. I can produce pieces of fabric; yes, sir.
253 Cross-Q. 139. Besides the sample?

A. Yes, sir.

Cross-Q. 140. Where is that?

A. In one of the other sample books.

Cross-Q. 141. Of what year?

A. I think it is about the same year as that.

Cross-Q. 142. About the year 1869?

A. I believe the book is about the same, I think. I am not sure, but I think the book is marked possibly like that or maybe 1870. I am not sure about the mark on the cover of the book, but we have another sample in another book.

Cross-Q. 143. But you have no made-up article?

A. We have no made-up article. The moths would have destroyed them long ago if we had attempted to preserve them.

Cross-Q. 144. Can you tell me where I can find any such made-up article?

A. Not at this time.

Cross-Q. 145. Can you give me any information which would lead me to find such an article?

A. Not unless you could among the retail stores find some that has never been sold or used.

Cross-Q. 146. Can you tell me any Philadelphia store to go to.

A. No, sir. We at the mill made large quantities of articles that we never saw in the market. We never went out among the retailers; never saw it ourselves.

Cross-Q. 147. Would Townsend & Yale be likely to know where such an article made of that fabric could be found?

A. I do not know. They might.

Cross-Q. 148. They would know better than you would?

A. Be more likely than myself.

Cross-Q. 149. They sold to the retailers on commission, I understand?

A. No, sir; they sold to the jobbers and the jobbers sold to the retailers. Townsend & Yale would be less likely to know of that fabric than I would.

Cross-Q. 150. Would they be more likely to know where it could be found at present?

A. I don't know. I said more likely possibly, but I think
254 they know no more than I do. We have made ten thousand dozens of an article which we would never see.

Cross-Q. 151. Do you remember Henry Henson, William Ward, John Rose, William Root, and Thomas Langham being in the employ of Thomas Dolan & Co.?

A. I remember all but two; yes, sir. I recollect them all by name.

Cross-Q. 152. Can you tell me the year they were in Dolan's employ?

A. I am not positive as to the particular dates. I know Henry Henson was there in charge of the warp and spooling room, on the third floor, and Thomas Langham was there for a great many years after I went there. He was in charge of the circular machine or building one and some of those other men ran warp looms.

Cross-Q. 153. Could not that fabric, "Exhibit Dolan No. 3," in your opinion, have been made on those machines of Dolan's, known as the double-ribbed machines?

A. An imitation of it might be made. We never attempted to

make any until last year, and that, I might add, was only with a single pillar.

Cross-Q. 154. Then with a single pillar it might be made on a double-ribbed machine?

A. After a fashion.

Cross-Q. 155. If fabrics like those you have marked 28 and 30, in book marked "Samples to 1869, Thomas Dolan," were made up into nubias and articles of that nature would not such articles present almost the same appearance as articles made up of the fabric "Exhibit Dolan No. 3?"

A. To an unpracticed eye.

Cross-Q. 156. They would?

A. They would to an inexperienced person.

Cross-Q. 157. They would to a person who was not called upon to observe them closely, would they not?

A. They might; yes, sir.

Cross-Q. 158. Did any other sample ever occupy the place where "Exhibit Dolan No. 3" is now fastened?

A. Not to my knowledge.

Cross-Q. 159. Please describe how the pillars of the fabric "Exhibit Dolan No. 3" were connected.

A. The pillars of the fabric were connected by the cross
255 of the guide bars, so that the guide bar on the right of the needle would occupy the position on the left, and the one on the left occupy the position on the right, thereby reversing their positions.

Cross-Q. 160. I want you to give as full an explanation of that as you can; perhaps that is as full.

A. I can give an additional explanation, but do not know it is better or not. We will take that fabric in any position on the loom, and when you wish to tie it as it is, a double pillar, the two threads in one guide bar on the right and the two threads in another guide bar on the left would cross each other, those on the left occupying the position of those on the right, those on the right occupying the position of those on the left. They then worked across and back again, and continued as before until the tying is made. I believe that answers the question fully.

Cross-Q. 161. You didn't see Mr. Boot designing this fabric, "Exhibit Dolan No. 3," did you?

A. I saw him have it on his sample loom; also saw him when he was putting it onto the large loom.

Cross-Q. 162. Did you see him design the fabrics you have marked No. 28 and No. 30, in book marked "Samples to 1869, Thomas Dolan?"

A. Yes; I was with him in and out at various times; saw him produce it on his sample loom as well as the other.

Cross-Q. 163. Does this book marked "Samples to 1869, Thomas Dolan," contain every sample of goods made by Mr. Dolan up to 1870?

A. No; not every one.

Cross-Q. 164. On what principle did you select the samples that are in this book?

A. I do not understand the question. There was no principle. All the fabrics that we remade previous to that time we collected samples of and put into that and other books. If you refer especially to that book, the only reason why it is prominent is because it happens to have in it the samples under discussion.

Cross-Q. 165. Then there are other books containing samples of Thomas Dolan to 1869?

A. Yes.

Cross-Q. 166. In the possession of the firm at present?

256 A. They are now in possession of Conyers Button, of Germantown.

Cross-Q. 167. And is it in one of those books in possession of Conyers Button in which is to be found the other sample you say is like "Exhibit Dolan No. 3?"

A. It is either in one of those that he has or one of those two that we have here, but I think it is in one he has.

Cross-Q. 168. What do you mean by "one of those two we have here?"

A. It is this one and another one in this case that is in court, but I have not looked through the other book to know whether it is there or not.

Cross-Q. 169. You do not know whether Conyers Button has that other book or not?

A. I believe he has. We sold all those books and such things to him, and he has all the books except those that may be in possession of the court or in use for the purposes of this case.

Cross-Q. 170. As I understand you, Mr. Dolan or Mr. Salmon or Mr. Jackson, either of them, could take samples out of the book marked "Samples to 1869, Thomas Dolan," and put them in it, could they not?

A. It might be possible for them to have done so, but it is not likely.

Cross-Q. 171. They had such access to it that they could do it?

A. Oh, they could.

Cross-Q. 172. And they may have done it for all you know?

A. I do not think they did or would without saying something to me about it.

Cross-Q. 173. You cannot say whether they did or not?

A. Not positively; do not believe they did, though.

Cross-Q. 174. When, after the time you speak of as having pasted this sample "Exhibit Dolan No 3" in the book, was it next called to your notice?

A. Frequently from that time on. It may have been from one to six or eight times a year, as we would look through the books for the purpose of making new samples.

Cross-Q. 175. You never copied that sample from the time you first made it until after the suit of Jennings *vs.* Kibbe was begun?

257 A. Not from 1870 until we produced it for making this fabric, the last of 1881, the latter part of 1881. I would cor-

rect that and say except for specimens for use in these suits by Jennings.

Cross-Q. 176. What was the proper width for nubias to which you have referred in your testimony?

A. The proper width would be anywhere from twelve to twenty-four inches, according to the size.

Cross-Q. 177. You personally had nothing to do with the manufacture of these fabrics?

A. No.

Cross-Q. 178. And they were not under your direction, as I understand?

A. No, sir.

Cross-Q. 179. Nor did you design them?

A. No, sir.

Cross-Q. 180. And your recollection is simply what you happened to see at Dolan's in the course of attending to your other duties?

A. My recollection is from what it was necessary for me to see, because these goods all came to us in the wareroom; and, further, these particular fabrics were fastened upon my memory probably more than others on account of its slow production in the looms, and after making them at three different periods from 1866 to 1870, in one way or the other, we finally stopped making them, as they were a slow production. All these facts serve to fasten these particular fabrics on my memory.

Cross-Q. 181. You include in your answer the two fabrics you have marked "28" and "30," the "seaweed" fabric?

A. Yes; and the other fabrics of similar nature which do not appear in that book.

Cross-Q. 182. Then, as I understand you, there was difficulty in manufacturing these fabrics?

A. In the respect that it was a slow production only; slower than some other things.

Cross-Q. 183. And they could not overcome this slowness of production?

A. No; not on the warp looms, because most of our warp looms were fine gauge.

258 Cross-Q. 184. So they abandoned the manufacture of this style of goods?

A. They did after making them, as I say, at various times, from 1866 to 1870 until here of late.

Cross-Q. 185. And did not commence it again until after the injunction in the suit of Jennings *vs.* Kibbe *et al.*, which shut you out from making the single-pillar goods?

A. Not until then.

Cross-Q. 186. Then you took up the double pillar?

A. Yes.

Cross-Q. 187. Give me a general idea of your duties at Dolan's from 1866 to 1871.

A. My duties were to see that the various fabrics coming into the wareroom were like the samples or like what we decided to make,

to weigh the goods and preserve a sample of them for reference, and report the weights to Mr. Dolan if anything was wrong.

Cross-Q. 188. You speak of the fabric "Exhibit Dolan No. 3" being used as a trimming for hoods and circulars and for the outside fabric. Now, what was the plainer fabric which you say you used for the lining?

A. It was what we called a "turned" fabric, made on a circular machine in some cases; some cases it was woven on a power loom like a Crompton loom.

Cross-Q. 189. Can you show me a sample of that in this book marked "Samples to 1869, Thomas Dolan?"

A. Fabric similar to those are the ones marked "A" and "B" on the same page as the sample I have previously marked No. "31." I have also marked specimens like what was used for lining hoods "C" and "D" on the same page as the sample I have previously marked "34." There may be several other samples in the book.

Redirect examination:

Redirect Q. 190. Besides the sample in the book marked "Samples to 1869, Thomas Dolan," which you have pointed out as capable of being made only on a warp loom, are there any others in the book which could have been made on a warp loom?

A. Oh, yes; a number.

259 Redirect Q. 191. Among them are there any which were actually made on a warp loom?

A. Yes; there are quite a number.

237 BROADWAY, NEW YORK CITY, *February* 20, 1883.

HENRY A. TRUITT, being recalled on behalf of defendant, further testifies as follows:

By Mr. BENNETT:

Q. 192. Examine the two nubias, "Complainants' Exhibit Dolan Nubia A" and "Complainants' Exhibit Dolan Nubia B," and state if these nubias were manufactured in your department at Thomas Dolan's factory.

A. They were.

Q. 193. Upon what kind of a machine were those nubias manufactured?

A. An English warp loom.

Q. 194. Were all the nubias, such as Exhibits A and B, that were manufactured at Dolan & Co.'s factory made upon the same kind of a loom?

A. They were.

Q. 195. From what, if anything, is the nubia "Complainants' Exhibit A" patterned or taken from?

A. It was taken from this piece of fabric here, Exhibit No. 3, in the book (pointing to "Exhibit Dolan No. 3").

Q. 196. State if that is a reproduction of that fabric, "Exhibit Dolan No. 3," and was it manufactured as a reproduction of that sample.

By Mr. BETTS: (Objected to as leading.)

A. Yes; and it was manufactured as a reproduction.

Q. 197. Upon what kind of a machine was Dolan Exhibit No. 3 manufactured?

A. An English warp loom.

Q. 198. Was it upon the same or a different kind of a machine that nubias Complainants' Exhibits "A" and "B" were manufactured?

260 A. Upon the same kind of a machine.

Q. 199. Do you know who made or from whom you obtained the book marked "Samples to 1869, Thomas Dolan?"

A. William Mann, stationer, of Philadelphia.

Q. 200. Did you order those books?

A. I did.

Q. 201. And you know of those books being delivered by William Mann to Thomas Dolan & Co.?

A. Yes.

Q. 202. About when was that?

A. About the year 1869 or '70.

Q. 203. From whom, if any one, did you receive orders to reproduce the fabric "Exhibit Dolan No. 3?"

A. From Mr. Thomas Dolan.

Q. 204. And I understand you the reproduction is the nubia marked "Complainants' Exhibit Dolan Nubia A?"

A. It is.

Q. 205. During the years 1865 to 1872 or subsequent thereto did you keep any descriptive books containing a description of the various fabrics manufactured by you so that you could at the present time trace precisely when you manufactured a certain fabric, by whom it was manufactured, in what quantities made, and to whom sold?

A. We have no book that would clearly show all these particulars; we simply keep a cost book, showing the weight, number, and expense of certain articles and the price put upon them.

Q. 206. Have you heretofore examined your books at my request for the purpose of tracing the fabric "Exhibit Dolan No. 3?"

A. I have.

Q. 207. With what result?

A. I could not get any satisfactory information from the book showing just what was done.

Q. 208. And is the same equally true of the various other styles of knitted fabrics you manufactured at and about that time?

A. Just the same.

Q. 209. Did you rely upon the samples of the various fabrics which you preserved as a description of their construction and the like?

261 A. Always.

Q. 210. And it was to those samples that you referred (and which you kept for that purpose) when you desired any description as to the construction and appearance of any fabric you had previously made?

A. Yes.

Q. 211. Since the time that the change in the method of keeping your samples was made, in 1869, and you put them in the books, one of which is now before you and marked "Samples to 1869, Thomas Dolan," have you kept a separate sample book for each year?

A. Yes; one or two, as the case required.

Q. 212. Has it ever been the practice, while you were with Dolan & Co., to antedate any sample books?

A. No, sir.

Q. 213. Is it possible that a sample book containing samples of fabrics made subsequent to 1869 could have been marked, through mistake or otherwise, "Samples to 1869, Thomas Dolan?"

By Mr. BETTS: (Objected to as incompetent.)

A. No, sir.

Q. 214. At the time you ordered these books from William Mann, in 1869, did you instruct them how to mark the books?

A. I did. They came from the stationer's labelled and lettered as you see.

Q. 215. Then the book "Samples to 1869, Thomas Dolan," was so marked when it was delivered to you by William Mann and before the samples were placed in it?

By Mr. BETTS: (Objected to as leading.)

A. It was.

Q. 216. In cases where a fabric had been made by you prior to 1870 and was subsequently reproduced would you put a sample of such reproduced fabric in the sample book for that year or in the sample book for the year when the fabric was originally made?

A. We would put it in the sample book for the year in which it was reproduced.

262 Q. 217. What was the practice at the factory of Thomas Dolan & Co. as to getting up new designs of fabrics and the making of fabrics therefrom during the period from 1865 to 1873 and thereafter?

A. We employed a designer, who would first produce the designs—that is, get them up—and for this purpose he had a small sample-room. After he had made a design it was submitted to Mr. Dolan, or he and the superintendent together, and if the design was approved by Mr. Dolan it was put on the large loom to be manufactured in quantities for distribution to our consignees. If it was disapproved it was generally lost sight of, as we never preserved any such samples.

Q. 218. Was a new design of fabric ever placed upon a full-sized loom until it had been approved by Mr. Dolan?

A. No, sir.

Q. 219. And when it was put upon a large-sized loom it was made in quantities and for the market?

By Mr. BETTS: (Objected to as leading.)

A. Always.

Q. 220. In case your designer designed a fabric which was not approved by Mr. Dolan, would a specimen or sample of that fabric be preserved and put in with your other samples or fabrics which were made upon your large looms and for sale?

A. No. The designer generally considers that as his own property, and he usually done what he liked with them. That is the general practice among designers.

Q. 221. Then the samples taken and preserved by you were only of such fabrics as were manufactured upon a full-sized loom?

By Mr. BETTS: (Objected to as leading.)

A. Yes.

Q. 222. From what, if anything, was the nubia "Complainants' Exhibit Dolan Nubia B" made or patterned from?

A. "Exhibit Dolan No. 3," with some very slight alterations.

Q. 223. In what respect does it differ from "Complainants'
263 Exhibit Dolan Nubia A" and the sample fabric "Exhibit Dolan No. 3?"

A. It is connected with the purling instead of the pillar threads. Every other set of pillars the bar or pillars is purled irregularly and each alternate one regularly.

Q. 224. Prior to January, 1878, you may state whether or not it was the practice at your factory in making nubias to continue the pillars or strips forming the body of the fabric out so as to form a fringe to the nubia.

By Mr. BETTS: (Objected to as leading.)

A. It was.

Q. 225. Has that been a common practice for years prior to 1878?

By Mr. BETTS: (Objected to as immaterial.)

A. Yes.

Q. 226. Can you produce any specimen of fabrics manufactured in that way by you?

A. I can; in the books marked "Samples 1876" and "Samples 1877, Fancy Goods."

Q. 227. Please point out any such samples in those two books.

The witness points to fabric, which is marked in pencil for identification "Truitt 1," in book marked "Samples, 1877, Fancy Goods;" also two samples, marked in pencil "Truitt 2" and "Truitt 3," in book "Samples, 1876, Fancy Goods."

Q. 228. Those samples to which you refer represent nubia fabric which was manufactured at Dolan's prior to 1878?

By Mr. BETTS: (Objected to as leading.)

A. They do.

Q. 229. And were such nubias manufactured in considerable quantities?

(Same objection.)

A. They were.

264 Q. 230. Describe how these nubias were woven.

A. The fabric was made into strips in lengths for nubias, and a portion of the fabric was continued without cutting for the purpose of forming a fringe or finish. Where they are connected the fringe would be extended out and then cut through the center after leaving the loom.

Q. 231. They were woven in nubia length, and then the pillars or strips continued out in a designated form and extended sufficient to form a fringe for two nubias, and then commenced and cut again and continued weaving in that manner in a continuous strip?

By Mr. BETTS: (Objected to as leading.)

A. That is the manner in which it is done.

Q. 232. And the continuous strips of fabric so woven would be then taken to the doing-up department and separated into nubias?

By Mr. BETTS: (Objected to as leading.)

A. They would.

Q. 233. That, I understand you, had been the common practice at Dolan's factory in the manufacture of nubias for years prior to 1878?

(Same objection.)

A. It has.

Q. 234. How long, to your knowledge, has Dolan & Co. been manufacturing nubias from knitted fabrics?

A. From the time we commenced business, in 1861, when I went there.

The sample fabrics "Truitt 2" and "Truitt 3," in book "Samples, 1876," and the sample fabric "Truitt 1," in book "Samples, 1877, Fancy Goods," are offered in evidence.

By Mr. BETTS: (The exhibits referred to are objected to as incompetent and immaterial.)

265 Cross-examination by Mr. BETTS:

Cross-Q. 235. Did you reproduce a nubia like Exhibits "A" and "B," as you speak of doing, at Dolan's until after Mr. Dolan had been enjoined from making the single-pillared nubia in the suit with Jennings *et al.* against him?

A. I did not.

Cross-Q. 236. It was done after the injunction on the single-pillared-fabric suit, was it not?

A. It was, except before the year 1870.

Cross-Q. 237. The reproduction was under the circumstances I have stated, was it not?

A. The reproduction was; yes.

Cross-Q. 238. And not until then?

A. No, sir.

Cross-Q. 239. And then from the time when, as you say, the fabric was first made prior to 1870 until the fabric was reproduced after

the injunction on the first Jennings design patent suit you did not manufacture that fabric?

A. No, sir.

Cross-Q. 240. That was an interval of at least ten years, was it not?

A. I believe so.

Cross-Q. 241. Was that book marked "Samples to 1869, Thomas Dolan," delivered to you personally by the maker?

A. An employee of his delivered it at the office, and they were brought over to me in a package tied up in paper, and I undone them, and as soon as I had time began to place in them all the old samples.

Cross-Q. 242. Was that book delivered to you personally by the maker?

A. No.

Cross-Q. 243. Why was it you reproduced fabrics like Exhibits "A" and "B?"

A. We have reproduced them for the purpose of manufacturing the goods for the market.

Cross-Q. 244. As I understand from your direct testimony, you have not found any data as to Mr. Dolan's establishing a descriptive book of any kind which would show the manufacture of that fabric, "Exhibit Dolan No. 3," and the date when it was made by you, have you?

A. I have not.

266 Cross-Q. 245. And you have made thorough search for such a book, have you?

A. I have. We have cost books, but they show only the weights, the cost, and the expense of the different articles.

Cross-Q. 246. You find nothing in any such books as will enable you to identify this fabric as made at a particular date, do you?

A. No, sir.

Cross-Q. 247. Is it not the fact that some of the samples in the book "Samples to 1869" are samples which were merely experimental samples, and which were never put into practical use?

A. The samples in that book are of fabrics that were all made in considerable quantities. There might possibly be one or two samples in the back part of the book, but otherwise I believe all those samples were made up and sent out.

Cross-Q. 248. There may be some in that book, then, which were not put into practical use and made in any quantity?

A. I cannot say that, but there may be some that were not made in large quantities.

Cross-Q. 249. Would not the weavers employed at the time these samples were made be apt to know whether they were made in quantities or not?

A. They might, probably, if they run the loom that the fabric was made upon; otherwise they would not know.

Cross-Q. 250. What do you mean by saying it is not possible that that book, "Samples to 1869, Thomas Dolan," may have been marked by mistake. Why is it not possible?

A. Because the books were not ordered until 1869, and they were labeled as they now appear when made and were received by me with those labels on them, and as the books have been in my charge I am positive that they have not been changed or altered in any way.

Subscribed and sworn to before me this — day of ——, A. D. 1883.

267 CORNELIUS JACKSON, a witness called on behalf of the defendants, having been duly sworn and examined, — as follows:

By Mr. BENNETT:

Q. 1. What is your name, age, residence, and occupation?

A. Cornelius Jackson; age, 40; residence, 204 Mill street, Germantown; occupation, knitter.

Q. 2. State for whom you are working at present.

A. I am working for Mr. Conyers Button & Co.

Q. 3. Do you know Thomas Dolan and Thomas Dolan & Co., of Philadelphia?

A. Yes, sir.

Q. 4. Have you at any time worked for Thomas Dolan & Co.; and, if so, when and how long?

A. I worked for Mr. Dolan in 1869. I started with him in 1869 and worked up till 1875, and left him for about a year, and then went back in 1876 and worked up till October, 1882.

Q. 5. Whom have you been working for since then?

A. Mr. Button.

Q. 6. In what capacity were you employed by Thomas Dolan & Co.?

A. The first time I was there I was running one of the looms; the second time I had charge of the warp looms and double-rib looms.

Q. Are you a weaver or knitter by trade?

A. Yes, sir.

Q. 8. What did you do on first entering the employ of Thomas Dolan & Co., in 1869?

A. The first thing I done was run a loom.

Q. 9. And did you continue operating a loom until you left, in 1875?

A. Yes, sir.

Q. 10. Who was designer during the first time you worked for Mr. Dolan?

A. Henry Boot.

Q. 11. Who was foreman in the loom department?

A. Henry Boot.

Q. 12. Examine the fabric marked "Exhibit Dolan No. 3," contained in the book marked "Samples to 1869," and state what, if anything, you know in reference to the same.

268 A. In 1870 I was put on the loom and made that fabric, and continued on some time; made several warps of it. That is all I can say. I made the fabric in different ways, this one, the double pillar, and I made the single pillar.

Q. 13 How long after entering Mr. Dolan's employ were you put to work weaving fabric such as "Exhibit Dolan No. 3?"

A. Well, I should say about nine or ten months.

Q. 14. How long did you continue manufacturing such fabric?

A. A month to five weeks.

Q. 15. Upon what kind of a loom did you manufacture such fabric?

A. English rotary warp loom No. 15.

Q. 16. Who instructed you to make that fabric and under whose directions was it made?

A. Henry Boot.

Q. 17. After the fabric was woven and taken from the loom what was done with it?

A. That I cannot answer; we were not allowed in the wareroom.

Q. 18. Then it was taken to the ware-room, but what became of it afterward you don't know?

A. That I don't know.

Q. 19. Are you an experienced weaver?

A. Yes, sir.

Q. 20. State whether or not the fabric "Exhibit Dolan No. 3" is a piece of the fabric or a piece of fabric of precisely the same construction as manufactured by you in 1870.

(Objected to as leading.)

A. Yes, sir.

Q. 21. Can you swear positively that such fabric as "Exhibit Dolan No. 3" was manufactured by you at the factory of Thomas Dolan & Co. in the year 1870?

(Objected to.)

A. Yes, sir.

Q. 22. Into what form was such fabric woven by you?

A. Nubias, with fringe on—made with a straight fringe purled down the pillar.

269 Q. 23. Did you weave the fabric into any other forms?

A. No, sir; not at that time.

Q. 24. Did you at any time weave the fabric into any forms other than nubia shape?

A. Made into all one piece the width of the loom. I don't know what they done with that.

Q. 25. Then you made it from straight strips the width of the loom into nubia shape?

A. Into nubia shape and into the width of the loom. I don't know what they done with that.

Q. 26. You say that the nubias were made with straight fringe?

A. Yes, sir.

Q. 27. State how that fringe was formed.

A. Straight pillar and a purl on it; the purl run all the way down it; pillars straight.

Q. 28. You mean that the fabric was allowed to run straight out, instead of being joined together into a mesh?

(Objected as leading.)

A. Yes, sir.

Q. 29. When did you first see the sample "Exhibit Dolan No. 3," in the book marked "Samples to 1869, Thomas Dolan?"

A. In 1876.

Q. 30. What occasion had you for referring to this book or how did you come to see it?

A. To form ideas from it.

Q. 31. Were you in the habit of referring to the old sample books?

A. Yes, sir.

Q. 32. For what purpose was that?

A. To form ideas if we wanted a new pattern to form anything new or different from was in the book.

Q. 33. That is, in getting up new designs and patterns?

A. In getting up new designs and patterns, so you need not get on the same thing we were on before; strike away from them.

Q. 34. And to your knowledge that sample, "Exhibit Dolan
270 No. 3," has been in that sample book since 1876, when you first saw it there?

(Objected to as leading.)

A. Yes, sir.

Q. 35. After first seeing that sample there in 1876 did you have occasion after that to examine or refer to it?

A. Not till I put it on the loom again.

Q. 36. When was that?

A. 1879, I believe.

Q. 37. You then referred to it for the purpose of reproducing that style of fabric?

A. Reproducing; yes, sir.

Q. 38. State whether or not it was the practice of Thomas Dolan & Co. to take a specimen of each and every fabric made and place it in a sample book, such as the one before you, for future reference.

A. Yes, sir; ever since I had charge of the machinery I generally cut a piece off, or have it cut off down in the wareroom, and put it in the book. Sometimes I would take a piece off myself and take it down to put in the book, as I made my orders out from those sample books because they are numbered. The samples are numbered of later years.

Q. 39. How often do you suppose you had occasion after 1876 to refer to the sample book before you?

A. Well, I would run through them two or three times a year. One book I would get with different samples, and I would put that to one side so I could get to it handy; I knew where it was.

Q. 40. Do you know of Mr. Truitt's having taken that sample out of the book and taking it up to the room where the looms are located for the purpose of reproducing the same?

A. I can't say for that sample, but he fetched one up to me of a similar kind about 1879.

Q. 41. But you can't say positively whether it was this identical sample or one precisely like it?

A. No; I can't say.

Q. 42. Is the sample "Exhibit Dolan No. 3" in the samples in the book as it was when you first saw it there, in 1876?

A. Yes, sir.

271 Q. 43. I believe you have stated that in 1879 or 1880 you reproduced the sample "Exhibit Dolan No. 3?"

A. Yes, sir.

Q. 44. How long did you continue to manufacture such fabric?

A. Until we stopped making it.

Q. 45. Just give the years—until about when.

A. 1881, I think.

Q. 46. Did you reproduce the double-pillared fabric of precisely the same construction as shown by the fabric "Exhibit Dolan No. 3;" and, if so, how long did you continue to make such double-pillared fabric?

A. Well, we made it right up to 1882.

Q. 47. Was that fabric reproduced known under the name of the double-pillared lace purl fabric?

(Objected to as leading.)

A. Yes, sir.

Q. 48. You stated that you wove that fabric upon a rotary warp loom under the directions of Mr. Henry Boot. Did you at any time see Mr. Boot weaving such fabric himself?

A. Yes, sir; I saw it on a sample loom.

Q. 49. Did you see any one else weaving it besides Mr. Boot?

A. No, sir.

CORNELIUS JACKSON cross-examined by SAMUEL R. BETTS' counsel for complainant:

Cross-Q. 50. Did you make an affidavit on the injunction motion in the suit of Jennings and others *vs.* Henry R. Kibbe and others?

A. Yes, sir.

Cross-Q. 51. Did you also make an affidavit for the defendant Kibbe and others in the suit of Jennings *vs.* Kibbe in opposition to the motion of attachment for contempt?

A. Yes, sir.

Cross-Q. 52. Which was sworn to on the 21st of October, 1881?

A. Yes, sir.

272 Cross-Q. 53. Was it you that copied the Exhibit Dolan No. 3 for Henry B. Renwick?

A. Yes, sir.

Cross-Q. 54. You made an affidavit, did you not, in the suit of Jennings and others against Thomas Dolan in opposition to the

motion for preliminary injunction, which affidavit was sworn to on December 15th, 1881, before R. S. Child, Jr., notary public?

A. Yes, sir.

Cross-Q. 55. The warp looms at Dolan's, from 1868 to 1874, were all in one room, were they not?

A. Yes, sir.

Cross-Q. 56. Mr. Henry Boot, whom you speak of being the designer at Dolan's up to 1875, didn't run a loom himself, did he, except a sample loom?

A. That is all.

Cross-Q. 57. And he used that sample loom simply to make fabrics which he had designed in order to show their appearance and submit them to the firm to decide whether they would manufacture them?

A. Yes, sir.

Cross-Q. 58. You don't know of your own knowledge that Mr. Boot designed that Exhibit No. 3, do you?

A. I seen it on his sample loom—the same thing.

Mr. CHAMBERS:

Cross-Q. 59. Do you know which he is referring to?

A. Yes, sir.

Mr. BETTS:

Cross-Q. 60. You don't know that he designed it?

A. I know that he put it on the loom.

Cross-Q. 61. Didn't Mr. Boot, as you remember, have considerable trouble in getting the loom to work on a fabric like Exhibit Dolan No. 3?

A. Yes, sir; he had a little trouble in putting it on the loom in starting it. We have in all looms.

Cross-Q. 62. And was it not slow work making it?

A. Yes, sir; slow work making it.

Cross-Q. 63. You don't know what became of the fabrics you made in your room after they left the room, do you?

273 A. No, sir.

Cross-Q. 64. You have no knowledge of their ever being put into use or sold or anything about them after they leave your room?

A. No, sir.

Cross-Q. 65. The fabrics you made on your loom, as I understand you, you made simply in strips or pieces and not into any manufactured articles?

A. Well, we made what we call nubias. We call them nubias. I don't know what they call them in the other room. At that time I called them nubias—fringed on both ends—a nubia scarf. That is what I would call it myself.

Cross-Q. 66. Do you remember Henry Henson, William Ward, James Rose, William Radford, and Thomas Langham being employed at Thomas Dolan's while you were there?

A. I don't remember Ward.

Cross-Q. 67. You remember all but Ward?

A. All but Ward.

Cross-Q. 68. Some of those men were employed in running the warp looms, were they not?

A. Yes, sir.

Cross-Q. 69. And all the men running the warp looms working in one room, as I understand?

A. In one room.

Cross-Q. 70. Do you remember the dates when any of those men were employed at Dolan's?

A. No, sir; I do not.

Cross-Q. 71. Did you have anything to do with the pasting samples into this book of samples to 1869 of Thomas Dolan?

A. No, sir.

Cross-Q. 72. You had liberty to take them out, did you not?

A. I had liberty to take them out from 1876.

Cross-Q. 73. Did you ever take any out?

A. What I have taken out I have put back again.

Cross-Q. 74. Did you ever take any out?

A. Not out of that book, sir.

Cross-Q. 75. Can you give me the date when the men were discharged at Dolan's and girls employed to run the warp looms?

A. I can't give you the date. I think it was 1874—1875. I don't know exactly. I can't give you the date, anyhow.

274 Cross-Q. 76. Give me the names of all the persons with Dolan who would have known of the manufacture of fabrics like that fabric, Exhibit Dolan No. 3, before the year 1878.

A. That is something it is pretty hard to tell you. There is George Beck and William Ther—he is dead, though—and James Rose. That is all I can give you that I think would remember it. I can give you the names of those that were working there at the time.

Cross-Q. 77. You can't give me the name of any man who ever had that fabric on his loom to make besides those, can you?

A. No, sir.

Cross-Q. 78. Have Conyers Button & Co. all the sample books of Thomas Dolan & Co. of knit goods?

A. I suppose they have all—all but what is down here.

Cross-Q. 79. What time in 1879 did you go to work for Mr. Dolan?

A. October.

Cross-Q. 80. How do you fix that date?

A. I fix that date, as I left a place in Germantown to go down there. It was Goose Fair time. That is the name they give it in the place I come from. It is a holiday. It starts the 2d of October and keeps on for seven days.

Cross-Q. 81. How do you know it was not in the fall of 1870 you went to Dolan's?

A. Because I was working up at—I remember when I left Spenser's to go there in 1869.

Cross-Q. 82. How do you know it was 1869?

A. By the time I have been in the country.

Cross-Q. 83. When did you come to the country?

A. In 1865.

Cross-Q. 84. How long after you started working for Mr. Dolan did you begin to make fabric like that Exhibit No. 3?

A. As near as I can say, it would be about nine months after I went to Dolan's.

Cross-Q. 85. Did Mr. Boot put that on your loom?

A. Yes, sir.

Cross-Q. 86. Was that just after you saw him working at it on his sample loom?

A. Yes, sir.

Cross-Q. 87. He put it right on your loom—the first one?

A. Yes, sir; put it right on my loom.

275 Cross-Q. 88. And you only worked on it a very short time, as I understand you?

A. From four to five weeks.

Cross-Q. 89. And then gave up making it and did not ever make it again until these suits were brought, and you made it for Mr. Renwick?

A. I made it for Mr. Dolan—Mr. Renwick; yes, sir.

Cross-Q. 90. You mean you made it for Mr. Renwick at Mr. Dolan's request?

A. Yes, sir.

Cross-Q. 91. How long had you been in this country before you went to Dolan's to work?

A. Three years and some months; I forget how many months. I landed in 1865—August, 1865.

Cross-Q. 92. Could that fabric (Exhibit Dolan No. 3) be made on anything but a warp loom?

A. Yes, sir.

Cross-Q. 93. On what else?

A. Double-rib hand frame.

Cross-Q. 94. Did you act as designer at Dolan's after 1875?

A. Yes, sir.

Cross-Q. 95. Please look at the samples marked Nos. 28 and 30 and with the initials H. A. T. in this book "Samples to 1869" and state who made them.

A. (After looking at same.) I can't answer who made them.

Cross-Q. 96. Don't you know who made either of those?

A. No, sir.

Cross-Q. 97. Did you make them?

A. No, sir.

Cross-Q. 98. Could those be made on anything but a warp loom?

A. Yes, sir. (After looking again at samples:) Yes they could be made on the double-rib hand frame.

Cross-Q. 99. Did you ever see fabrics like Nos. 28 and 30 at Dolan's?

A. Yes, sir; I have seen them there. I can't say who made them.

Cross-Q. 100. When did you see them?

A. I seen it some time in 1872 or something like that, as near as I can say. I didn't see it on the loom. (After looking
276 again :) No; I won't say anything about that at all; I don't know anything about it.

Cross-Q. 101. Are those Nos. 28 and 30 single-pillar or double-pillar fabrics?

A. Single pillar, No. 30; that is single pillar.

Cross-Q. 102. Both single pillar?

A. Yes, sir.

Cross-Q. 103. Would not those two fabrics, Nos. 28 and 30, when made up into nubias, for example, present an appearance almost identical with nubias made out of fabric Dolan Exhibit No. 3 to a person's eye?

A. Yes, sir; all but the length of the purl.

Cross-Q. 104. That is, the length of the purl; in Dolan's No. 3 it is longer?

A. Longer; in the other the purl is shorter. Exhibit Dolan No. 3 is made entirely different from Nos. 28 and 30. It is lapped different entirely to what this is (referring to Nos. 28 and 30). This (Dolan No. 3) is tied in by the purl, and this (Nos. 28 and 30) is tied in by the inlay. (After looking again at samples:) It may be tied in by the purl. That is what it is; tied in by the purl.

Cross-Q. 105. They look just about alike when looking at them in made-up fabric, do they not?

(Objected to as immaterial and as the articles will show for themselves.)

A. They would not look alike as they are made there in Dolan No. 3.

Cross-Q. 106. That in No. 3 would not look like these to the eye (Nos. 28 and 30)?

A. Nos. 28 and 30 wouldn't look like No. 3.

Cross-Q. 107. What do you mean by not looking alike; that Dolan No. 3 is made larger or with coarser wool and longer purls?

A. It is made larger and with longer purls.

Cross-Q. 108. Is that English warp loom you spoke of, No. 15, still in Dolan's factory?

A. No, sir.

Cross-Q. 109. What became of it?

A. It is Button's.

277 Cross-Q. 110. Mr. Button has it now, has he?

A. Yes, sir.

Cross-Q. 111. Don't you know of that sample "Exhibit Dolan No. 3" being out of the sample book "Samples to 1869?"

A. No, sir.

Cross-Q. 112. Have you any written entry or memorandum of any kind to which you can refer and which will prove that fabric like Exhibit Dolan No. 3 was made at Mr. Dolan's?

A. No, sir.

Cross-Q. 113. Have you any written memorandum or entry of

any kind to which you can refer which would show any particular date when that fabric was made?

A. No, sir.

Cross-Q. 114. Can you produce any article that was made of fabric like that of "Exhibit Dolan No. 3" at Dolan's prior to 1878?

A. No, sir.

Cross-Q. 115. Can you tell me where I can find any such article made of such fabric?

A. No, sir.

Cross-Q. 116. Can you mention any person who would be likely to give me information which would lead to my finding an article made of such a fabric?

A. Yes, sir.

Cross-Q. 117. Whom?

A. Mr. Beck.

Cross-Q. 118. As I understand you, you began again to reproduce this fabric like "Exhibit Dolan No. 3" after the injunction was granted in the suit of Jennings against Kibbe, which prevented Mr. Dolan from making the single pillar lace nubia?

A. Yes, sir.

Cross-Q. 119. How long did you continue to make it then; until you sold out to Mr. Button, was it?

A. Until we sold out to Mr. Button.

Cross-Q. 120. Describe the mechanical construction of that "Exhibit Dolan No. 3" fully.

A. Pattern is sixteen courses long, two pillar bars and one purl bar.

Cross-Q. 121. How are the proportions of the fabric joined together?

278 A. By the pillars.

Cross-Q. 122. Go on and state fully.

A. It is joined together by the pillars crossing from one needle to the other and crossing back again, the purl crossing the pillars each course.

Cross-Q. 123. Anything more?

A. That is all there is in it.

Cross-Q. 124. How old were you when you went into Mr. Dolan's employ?

A. 27.

Cross-Q. 125. Did you ever see another piece of sample fabric in any of Dolan's sample books like "Dolan Exhibit No. 3?"

A. I have seen two pieces of it.

Cross-Q. 126. In what books and where are they now?

A. I can't answer that.

Cross-Q. 127. Has Mr. Button got those books now?

A. I believe he has got all the books there were. I am not sure he has got all or not.

Cross-Q. 128. I mean has he got any books with a sample like that "Exhibit Dolan No. 3" in them now?

A. Not that I am aware of.

Cross-Q. 129. Have you charge of these books of Mr. Button's?

A. No, sir.

Cross-Q. 130. Who has?

A. No one that I know of, only Mr. Button himself. I am allowed ta go to them and look at them if I want to, but not have charge of them.

CHARLES H. SALMON, a witness called on behalf of the defendants, having been duly sworn, was examined as follows:

By Mr. BENNETT:

Q. 1. What is your name, age, residence, and occupation?

(Complainants' counsel objects to any testimony of this witness which is directed to or tends to show prior knowledge or use of the patented inventions sued on in this case on the ground that the name of the defendant's witness has not been stated in defendant's answer, as required by the statute.

279 Defendant's counsel states that this witness is called simply to corroborate the testimony of the former witnesses.

(Question read to witness.)

A. Charles H. Salmon; age, 48; occupation, manufacturer; residence, Philadelphia.

Q. 2. You are a member of the firm of Thomas Dolan & Co.?

A. I am a member of the firm of Thomas Dolan & Co.

Q. 3. How long have you been connected with the firm of Thomas Dolan & Co.?

A. Since July 1, 1868.

Q. 4. In what capacity?

A. As general superintendent.

Q. 5. Examine the fabric marked "Exhibit Dolan No. 3," contained in book marked "Samples to 1869, Thomas Dolan," and state what, if anything, you know in reference to the same.

A. I know that fabric was manufactured in the room of which Henry Boot was the overseer, in the years 1868, 1869, and 1870, to my knowledge.

Q. 6. What quantity of such fabric was manufactured during the years 1868, 1869, and 1870?

A. As near as I can recollect, there were two looms running on it; I couldn't say positively; one loom ran steadily on it for some time, and sometimes there was more than one; I think at one time there were three looms running on it.

Q. 7. State as near as possible what quantity of such fabric was manufactured during those years.

A. That I couldn't come anywhere near; we would produce about ten or fifteen pounds a day of that, I guess; I couldn't state the absolute quantity or anywhere near it; it was manufactured in large quantities.

Q. 8. At that time what were your duties at the factory of Thomas Dolan & Co.?

A. My duties were to buy the yarns and see that the proper kinds of yarns were got for the various fabrics that were required to be

made, and see that the machines were kept in working order, and see that they were producing the proper kind of work.

Q. 9. Did you know and were your duties such as to com-
280 pel you to know the different kinds of knit fabrics that were being manufactured at the factory?

A. Yes, sir; I had to prepare the warps for them all and see that they were put into the loom.

Q. 10. State whether or not you prepared the warps for the fabric "Exhibit Dolan No. 3."

A. I did.

Q. 11. At whose request did you furnish the warps for that fabric?

A. Well, the general way was, when we got our samples and decided to put it in the loom we made so much of a certain stuff and laid out the warps for it; prepared the yarn; selected the loom for it.

Q. 12. So that your duties were such that of necessity you knew all about the manufacture of the fabric such as "Exhibit Dolan No. 3?"

(Objected to as leading.)

A. Yes, sir.

Q. 13. Do you know who designed that fabric?

A. Mr. Henry Boot is the man that designed it and first put it on the sample loom; I recollect distinctly when he had it on the loom, as he called my particular attention to it as being a nice thing.

Q. 14. Do you know for what purpose that fabric was used?

A. It was used for several articles. It was used for hoods, hood tops, and I think there were shawls made from it. I won't say positively. After the goods were taken from the looms in good order I didn't follow the cutting up.

Q. 15. They were taken from the looms to the cutting-up department and there used for various purposes?

A. Yes, sir.

Q. 16. Did you see that fabric, "Exhibit Dolan No. 3," in the loom and in the course of its being manufactured?

(Objected to as leading.)

A. Yes, sir.

Q. 17. When first did you see the sample "Exhibit Dolan No. 3" in the book marked "Samples to 1869, Thomas Dolan?"

281 A. When the book was made, in 1870. In 1870 the book was made up, and I first saw it in the book at that time.

Q. 18. The book is marked "Samples to 1869, Thomas Dolan." What, if anything, does that indicate?

A. It indicates that after that time we had a book dated for every year. We commenced making our sample book, and we only had the samples put away with tags on in a rough sort of way, but at that time we commenced making a book for every year, and these are the samples up to 1869.

Q. 19. Then this sample book was made up in 1870, and contains samples of fabrics made prior to 1870?

A. Yes, sir; that includes 1869 and previous to that.

Q. 20. When was the book marked "Samples to 1869, Thomas Dolan?"

A. When it was ordered to be made, and before there was anything put into it. It was ordered in that way, and the samples were put in it after we received it.

Q. 21. Has any samples been placed in that book since that time?

A. Not to my knowledge.

Q. 22. Does that sample book contain any samples of fabrics that were wade subsequent to 1869?

A. Not any samples. There may be reproductions there that were made after that, but the samples that were put in that book were all made prior to 1870, but we often reproduce articles.

Q. 23. After that sample book was made up, in 1870, and your first seeing the sample fabric "Exhibit Dolan No. 3" therein, did you have occasion to refer to the same; and, if so, when and how often?

A. Well, sometimes we would refer to it two or three times a week and other times not for a month, as occasion required us to refer to the sample we were making.

Q. 24. What was the occasion or necessity of your referring to these old sample books?

A. As I remarked before, to see whether the new samples were being produced daily in the pattern room were similar to what we had already had before.

Q. 25. In whose charge were those sample books?

A. In charge of Mr. Henry A. Truitt.

282 Q. 26. Did Mr. Henry A. Truitt make up these sample books or assist in making them up.

A. Yes, sir; he made them up.

Q. 27. Does that fabric, "Exhibit Dolan No. 3," occupy the same position in that book as it did when you first saw it?

A. Yes, sir.

Q. 28. Can you swear positively that fabric such as Exhibit Dolan No. 3 was manufactured at the factory of Thomas Dolan prior to 1870?

A. I can; positively.

Q. 29. State whether or not the sample fabric "Exhibit Dolan No. 3" is a piece of the original fabric manufactured at that time.

A. Yes, sir; it is.

Q. 30. Your experience in fabrics has been such as to clearly enable you to tell whether two fabrics are or are not of the same construction?

A. Yes, sir.

Q. 31. And you have known of the existence of that sample in the book marked "Samples to 1869" since 1870, and had occasion to refer to the same frequently since that time?

(Objected to as leading.)

A. Yes, sir.

Q. 32. Do you know where Henry Boot is at present?

A. No, sir.

Q. 33. Do you know of your own knowledge that he is dead?

A. I only know that his daughter told me that he was dead.

(Answer objected to as leading.)

Q. 34. During your experience in the manufacture of knitted fabrics has it or not been a common practice to extend or run out the end of the fabric so as to form a fringe or finish to the fabric?

(Objected to as leading.)

A. Very common.

283 Q. 35. How long have you known fabrics to have been so made?

A. Ever since 1869, my first experience in it.

Q. 36. That is, in order to form a fringe or finish to the fabric it was allowed to run straight out instead of being joined together in the form of a mesh?

(Objected to as leading.)

A. Yes, sir.

Adjourned to 10.30 a. m., Thursday, February 8, 1883.

237 BROADWAY, NEW YORK, *Feb'y* 9, 1883.

Cross-examination of C. H. SALMON by Mr. BETTS:

Cross-Q. 37. Did you make an affidavit for the defendants in the case of Jennings *et al. vs.* Kibbe, Chaffee, Shreve & Co.?

A. I think not. I am not sure, though.

Cross-Q. 38. Did you make an affidavit for the defendants in opposition to the motion for preliminary injunction in the suit of Jennings *et al. vs.* Thos. Dolan?

A. I think I did.

Cross-Q. 39. Was that affidavit subscribed and sworn to before James F. Doyle, notary public, on December the 16th, 1881?

A. Yes.

Cross-Q. 40. How did you fix the date when you first became connected with the firm of Thomas Dolan & Co.?

A. By my memory. I made an arrangement with Thos. Dolan & Co. to take effect January 1, 1868, and the engagement was made in September or October, 1867.

Cross-Q. 41. When did you first become connected with Thomas Dolan & Co.?

A. January 1, 1868.

284 Cross-Q. 42. In what business had you been and where immediately before that?

A. I had been engaged principally in the manufacture of carpets.

Cross-Q. 43. And where?

A. With E. S. Higgins & Co., of New York.

Cross-Q. 44. My question was immediately before.

A. I understand you. It was immediately before.

Cross-Q. 45. And you left them to go to Dolan's?

A. Yes.

Cross-Q. 46. Was Henry Boot the designer at Dolan's when you went there?

A. He was the designer and foreman of the knitting-room.

Cross-Q. 47. What were your specific duties as superintendent when you first went to Dolan's and during the years 1868, '69, and 1870?

A. My specific duties were to buy the yarns, have them prepared and dyed, then to see that they were put on the looms and that the fabrics and designs we had concluded to make were produced.

Cross-Q. 48. Is it your recollection that you saw Mr. Henry Boot having the fabric like that Exhibit Dolan No. 3 on his sample loom and weaving it thereon himself?

A. Yes.

Cross-Q. 49. And how soon after that, is it your recollection, that the fabric was put on a regular loom to be made?

A. I cannot tell exactly, but very often after a sample was produced we would have it on the regular loom within a week. In the particular case in question it might have been one, two, or perhaps three or four weeks.

Cross-Q. 50. Are you in the habit of seeing the looms in operation and the fabrics on them? I refer particularly to the warp looms.

A. Yes; fifty times a day.

Cross-Q. 51. On how many different fabrics would those warp looms, as a rule, be working at the same time? Give me an average.

A. There were 17 of those looms. Sometimes they would be on 17 different fabrics, and sometimes the entire number would be running on one single fabric, as the case required.

Cross-Q. 52. The mere fact that the fabric was made on a
285 regular loom would not show that it was ever sent to a consignee, would it?

A. Yes; anything that was made in the regular way always went with the product of the mill, and was sent to be sold.

Cross-Q. 53. Suppose it was made on a regular loom and turned out bad in some way?

A. That was immaterial; we always sent them out either as "first" or "seconds."

Cross-Q. 54. In the years 1868 to 1870 who were the consignees of Thomas Dolan & Co.?

A. Townsend & Yale, of New York city.

Cross-Q. 55. And any knitted fabrics that were made at Thomas Dolan's in those years would get into the hands of Townsend & Yale for sale to the jobbers, would they not?

A. In New York city; yes; but not in Philadelphia.

Cross-Q. 56. To whom would they go in Philadelphia?

A. Root, Kibbe & Co., or perhaps Colliday, Trout & Co.

Cross Q. 57. Was that the same Kibbe who is now at the head of Kibbe, Chaffee, Shreve & Co.?

A. Yes; I think so.

Cross-Q. 58. Give me an idea, as near as you can, of how many different designs of fabrics of knitted goods Henry Boot would make during the years 1868 to 1870—new designs.

A. That is a very difficult question to answer. Sometimes he would make three or four in one day, and sometimes it would take a week to produce one.

Cross-Q. 59. I want a general idea.

A. For the three years 1868, '69 and 1870 possibly a hundred.

Cross-Q. 60. A hundred a year?

A. Yes.

Cross-Q. 61. Now, do you mean to testify that you can remember each of those designs made by Mr. Boot in the years 1868 to 1870 in such a way that you can now swear that they were being made at a particular time?

A. I do not, but I mean to swear that I can testify to anything that particularly attracted my attention.

Cross-Q. 62. Did you hear the fabric "Exhibit Dolan No. 3" spoken of under the name of "seaweed" fabric at your place during those years?

A. Yes.

286 Cross-Q. 63. You did not see what was done in the cutting-up department, where the fabrics were made up into different articles, did you?

A. Only in a general way. I saw all goods that were made up in a condition for the market, after they were made up, but when they were being cut up they did not come under my special supervision.

Cross-Q. 64. As I understand you, that book marked "Samples to 1869, Thomas Dolan," included, when they were originally put into it, only samples to January 1, 1870. Is that the fact?

A. Yes.

Cross-Q. 65. Since then all samples have been put into separate books for each year, have they not?

A. Yes.

Cross-Q. 66. And that was done by Mr. Truitt?

A. Yes.

Cross-Q. 67. Who helped him, if any one?

A. One of his assistants in his department.

Cross-Q. 68. Can you give me the name of any one who did so?

A. Principally females, but really I could not give you the names, as there were so many changes in assistants. Mary Kimble was one, however.

Cross-Q. 69. Can you not recollect any one else?

A. Not at present.

Cross-Q. 70. Who was the manufacturer of that sample book, "Samples to 1869." Of whom did you buy it?

A. I think Michael & Plumley, of Philadelphia, but I would not be positive.

Cross-Q. 71. It was that concern that you dealt with?

A. That is a concern in the same line of business.

Cross-Q. 72. Who would know where that book came from?

A. Mr. Truitt should know. I could tell you probably by reference to the books.

Cross-Q. 73. Could that fabric, "Exhibit Dolan No. 3," be made on anything else than a warp loom?

A. It could be made on a double-ribbed machine, provided it was fitted up like a warp loom, but it could not be made on any machines we had except a warp loom.

287 Cross-Q. 74. All your warp looms at Dolan's were in one room, were they not?

A. Yes, as long as Henry Boot had charge of them.

Cross-Q. 75. You did not cut off any of those samples for that book yourself, did you?

A. I have no doubt that I have cut off a good many.

Cross-Q. 76. Can you point out any that you put in?

A. No, sir.

Cross-Q. 77. You did not put them in that book yourself?

A. I do not remember that I did.

Cross-Q. 78. Have you taken any out of that book at different times?

A. I have taken a sample to see how it was made and stuck it right back again.

Cross-Q. 79. Sample fabrics were taken out at different times?

A. We might lift them off to see the backs of them. Very often in knitted fabrics we have to look at the backs as well as the face. Sometimes it would be necessary to remove them.

Cross-Q. 80. There were several persons who had access to that book and authority to take fabrics out of it?

A. No, sir; there were not. The books were in charge of Mr. Truitt, and no one had any right or access to them but Mr. Truitt, Mr. Dolan, or myself.

Cross-Q. 81. And Mr. Jackson after 1875?

A. Mr. Jackson had nothing to do with them. After the sample was put in the book he had no right to take it out. He could look at it in the book.

Cross-Q. 82. You speak of samples being put away with tags originally. Was there anything in connection with those tags to indicate the date of the sample?

A. Yes.

Cross-Q. 83. What was it?

A. It would indicate nearly the date, and very often the loom it was made on.

Cross-Q. 84. On the tag?

A. Yes.

Cross-Q. 85. There is no tag attached to the sample "Exhibit Dolan No. 3" now, is there?

A. No, sir; there is no tag connected with any of them now in the book, to my knowledge, beyond a certain few cases.

288 Cross-Q. 86. Are not a good many of those samples in that

book now on tags or paper on which they were originally put? Please look.

(Witness examines sample book.)

A. I should say that this paper was part of the paper that was put on the back of the samples to hold them together. They may be a part of the original tag. I have no doubt it is.

Cross-Q. 87. You speak of knowing that the fabric "Exhibit Dolan No. 3" was made in the room of which Henry Boot was foreman in the years 1868, 1869, and 1870. Is that of your own knowledge?

A. Yes.

Cross-Q. 88. Will you swear positively that such fabric—that is, fabric of precisely the same construction—was made in Boot's room in 1868?

A. I will.

Cross-Q. 89. Who was the first man who wove this fabric on a regular loom at Dolan's?

A. That I cannot say. Every loom in the shop was capable of making it. I might qualify this by saying a fabric which required a particular loom—I could remember what loom we would run it upon; but a fabric like this, which we could run on any of our looms, I could not remember the particular loom.

Cross-Q. 90. Can you give me the name of any man you ever saw manufacturing the fabric on a warp loom?

A. I can give you the name of Cornelius Jackson, for one, and Edward McDevitt, for another.

Cross-Q. 91. Will you swear that you ever saw Edward McDevitt making that fabric—Exhibit Dolan No. 3—on a warp loom?

A. I cannot swear positively, but I think I have seen him do so.

Cross-Q. 92. Can you swear positively that you ever saw Jackson do it?

A. Yes; I can.

Cross-Q. 93. Was that at the time that it was first begun to be made that you saw Jackson do it?

A. No; I do not think it was, because Jackson was not in
289 the shop at the time it was first made. We changed a great many hands there. I could not keep track of them.

Cross-Q. 94. Can you give me any other than the two names you have mentioned?

A. No, sir; it would be impossible to do so, as I said before, unless it was some fabric that we could only run on some special loom.

Cross-Q. 95. You cannot tell me the quantity of that fabric that was made at Dolan's, can you?

A. No, sir.

Cross-Q. 96. Nor do you know the quantity of it that was made up into articles, do you?

A. No, sir. I could only tell you that when a fabric was put on a regular loom we would always make considerable quantities of it.

Cross-Q. 97. That is simply a general rule in regard to fabrics?

A. That is a general rule. I know that we did make considerable of that particular fabric, but what amount I could not say.

Cross-Q. 98. Can you produce any portion of that fabric except this exhibit which you can swear was made at Dolan's in 1868 to 1870?

A. Not now, but I could three months before this suit came on, for I saw a hood on a woman's head made of this fabric which came from our mill.

Cross-Q. 99. Do you know who that woman was?

A. Saw her on the street, and recollect that the nubia she wore was one made by us.

Cross-Q. 100. Do you know who she was?

A. No, sir. I saw the article; that is all.

Cross-Q. 101. And from seeing that hood on the woman's head do you mean to say that you can swear that hood was made by you between 1868 and 1870?

A. I can go on the streets of this city and, seeing anything we ever made, can recognize it.

Cross-Q. 102. In what winter was it you saw that hood being worn?

A. I called it to mind and spoke of it when this case came up.

Cross-Q. 103. Two or three months before the case came up?

290 A. Only a short time before the case came up. It was an old hood.

Cross-Q. 104. Have you any book of writing, entries, or written memoranda of any kind which will prove the manufacture of fabric such as "Exhibit Dolan No. 3" at Dolan's between the years 1868 and 1870?

A. There might be. I cannot say.

Cross-Q. 105. You cannot point me to any such a memorandum or entry?

A. Possibly not, because our system of keeping them was not so perfect then as afterwards.

Cross-Q. 106. You cannot now tell me of any such?

A. I do not know that I could.

Cross-Q. 107. You cannot now?

A. I cannot now.

Cross-Q. 108. Do you know the names of any retailers or jobbers to whom your consignees sold this fabric?

A. No, sir.

Cross-Q. 109. Is the yarn used in that fabric of the peculiar kind that you would recognize and remember it?

A. Yes; I can recognize it by my recollection of the kind of yarn we then used.

Cross-Q. 110. Who did you buy the yarn of that now appears in that fabric, "Exhibit Dolan No. 3?"

A. I think we bought it of J. & W. Yewdall, of Philadelphia.

Cross-Q. 111. And did you buy that yarn at the time or just previous to making that fabric?

A. We generally bought a three or six months' supply of yarns

we would likely use in different fabrics. We would buy the yarn previous, but how much I cannot say.

Cross-Q. 112. It would be within three or six months?

A. Very likely; yes: I think at that time we bought of Fiss, Banes, Urban & Co. or their successors.

Cross-Q. 113. It was all from one of those two firms?

A. Yes; from that mill.

Cross-Q. 114. Can you tell me what you paid for that yarn?

A. I cannot tell you within a dollar a pound.

Cross-Q. 115. Would your books show?

A. I think they would.

291 Cross-Q. 116. Would your books enable you to identify the purchase of that style of yarn?

A. I think they would.

Cross-Q. 117. Can you tell me the quantity of that yarn you bought?

A. No, sir.

Cross-Q. 118. Would your books show?

A. I think our books would show how much we used in a month or three months, but that same kind of yarn entered into the manufacture of a great many different fabrics.

Cross-Q. 119. Did you make any articles of the construction of "Exhibit Dolan No. 3" in colored fabrics?

A. My impression is that we did not; that we made it all in white.

Cross-Q. 120. Did you buy your yarns for such fabric dyed at that time?

A. No; we dyed them ourselves.

Cross-Q. 121. Who managed the dyeing department at that time?

A. It was under my supervision; I gave the yarn out to the dyer and he dyed them.

Cross-Q. 122. Would it require any change in the warp looms to work a thicker yarn or a thinner or lighter yarn, as to their adjustment?

A. Do you mean to make a fabric with yarn like the exhibit or to work a heavier or a lighter yarn than that?

Cross-Q. 123. My question is, Would the difference in the thickness and weight of the yarn require a difference in the adjustment of the machine?

A. It is always required. It is only a mechanical difference in adjustment, which is variable all the while.

Cross-Q. 124. It is nothing that would make you recollect the circumstances? It is not such a change, I mean.

A. No, sir. There would have to be a very great difference in the yarn to require a difference in the construction of the looms.

Cross-Q. 125. Please examine that fabric, "Exhibit Dolan No. 3," and give me in detail the exact mechanical construction of it, and also state in full the process of making that fabric from the first taking of the yarn.

292 By Mr. BENNETT: (Objected to, as the fabric itself shows the way in which it is constructed, and for the further reason

that the witness is not called as an expert, but merely to testify as to the date when the fabric was made.)

A. In order to make that fabric we figured out how many threads were required to fill the loom. Then the warp is made so many threads for the threads of the loom, the pillar threads corresponding to the warp. Then we take the purling threads and take the number of threads we require from the tail up to the pillar. We make another warp to correspond—the same number of ends—figuring the difference in the length of the "take-up" so that both warps will come out together from the side of the loom. The Jaccard attachment or pattern cards are put on to produce the fabric. The loom is then started up, and the adjustment of the stiffness or slackness of the fabric is made by the weights on the machine to give the fabric desired to be produced, the pillars being joined together to form the meshes.

Cross-Q. 126. Now, what was there distinctive about the warps for that fabric, Exhibit Dolan No. 3, that was different from the warps for other fabrics of the same kind?

A. It requires some certain number of threads in one fabric to produce an effect different in another fabric. The number of threads required for a pillar in one fabric might be entirely different in another fabric. We might have a pillar to every needle, and again a pillar to every six needles, in various fabrics. There is no way of making the comparison except in that way. If you will select two fabrics I can give you a definite answer; otherwise not.

Cross-Q. 127. I ask you what is particularly distinctive about "Exhibit Dolan No. 3" as compared with any other fabric.

A. Simply its construction—the way it is put together and the joining of the pillars together.

Cross-Q. 128. Point out what is distinctive so far as the warp is concerned.

A. The threads are spaced on the loom so as to produce that particular effect. Then the purling threads are put in in the same way.

293 Cross-Q. 129. Then it is the mere question of the spacing of the threads?

A. The spacing of the threads and getting the width or narrowness of the pillar strips.

Cross-Q. 130. Who decided whether a pattern that was made on the sample loom by Boot should be manufactured regularly on the larger looms?

A. At that time Mr. Dolan.

Cross-Q. 131. And the samples were submitted to him, and he rejected some, I presume, and adopted those which he thought would be the best?

A. Yes.

Cross-Q. 132. Did not Mr. Henry Boot frequently call your attention to samples he got up?

A. When he had them on his loom; yes.

Cross-Q. 133. Didn't he frequently speak of them to you—various samples—as being good things, nice things?

A. Yes.

Cross-Q. 134. You cannot pretend yourself to pick out the samples in that book that he praised that way, can you?

A. Only what made an imprestion upon my mind.

Cross-Q. 135. You cannot swear that no samples have been put in that book—"Samples to 1869, Thomas Dolan"—since it was first made up, can you, of your own knowledge?

A. I can swear that, to my own knowledge, no samples have been put in.

Cross-Q. 136. You mean that, so far as you know, no samples have been put in?

A. Yes; that is the way I understand your question.

Cross-Q. 137. Is that what you mean?

A. I mean that, to my knowledge, there has been no samples put in that book since 1870—since the book was made up.

Cross-Q. 138. There may be some reproductions that were made after 1870, may there not?

A. We may have reproduced some of those samples, but, if so, we put them in another book—the book for that year.

Cross-Q. 139. Can you swear that the samples in that book are the samples that were originally put in there?

A. Yes; I think I can. We might have reproduced these, or some that are in another book, some two or three years afterwards.

294 Cross-Q. 140. How have you any recollection of the position occupied by that "Exhibit Dolan No. 3," as to page, &c.?

A. I have no recollection as to its position beyond a sight of it—frequently seeing it; same as I would know the location of the city hall by frequently passing down Broadway and seeing the building there. I have no recollection as to the position of the sample beyond seeing it in that position in the book off and on.

Cross-Q. 141. You have seen that sample, Exhibit Dolan No. 3, no oftener than you have the other samples in the book?

A. No, sir.

Cross-Q. 142. Then your recollection, prior to the matter being brought to your particular attention in this case, in regard to that sample is substantially the same as your recollection in regard to any other sample in that book?

A. Exactly the same.

Cross-Q. 143. Do you recollect fabrics of the construction of those two fabrics that are marked numbers 28 and 30 in this book, "Samples to 1869, Thomas Dolan," and with the initials of "H. A. T." and the date February 8, 1883?

(Objected to as improper and incompetent.)

A. I recollect the samples, but do not know anything about the memorandum. We used to call the fabric "seaweed."

Cross-Q. 144. And you gave the same name to the "Exhibit Dolan No. 3?"

A. Possibiy; yes. We called this "seaweed," and the other was of precisely the same construction, except the manner of joining together to form the meshes.

Cross-Q. 145. Did you make those fabrics of that smaller size like Nos. 28 and 30 in any quantity?

A. I think we made considerable quantities of those.

Cross-Q. 146. Who designed those two samples, Nos. 28 and 30?

A. I think Henry Boot did.

Cross-Q. 147. Did you ever see him have either of those on his sample loom?

A. I feel positive I did, but I would not swear as to that.

295 Cross-Q. 148. Were those made on warp looms at Dolan's?

A. Yes.

Cross-Q. 149. What is known as English rotary warp looms?

A. Rotary warp looms.

Cross-Q. 150. What were those fabrics, Nos. 28 and 30, used for?

A. Used for shawls, nubias, and such fabrics—for light fabrics.

Cross-Q. 151. Used for trimming?

A. Yes; for trimming, sometimes.

Cross-Q. 152. For hoods?

A. Hood tops and various things. There is no end to the variety of things that were made from the fabrics; very often a single fabric would enter into every article we made.

Cross-Q. 153. Can you tell me who bought the yarn that Nos. 28 and 30 is made from?

A. No; I cannot. We had some such yarn as that when I came there, in 1868.

Cross-Q. 154. How soon after coming there do you remember seeing fabrics like 28 and 30 being manufactured?

A. Six or eight months; certainly less than a year.

Cross-Q. 155. Is it your recollection that you saw McDevitt or Jackson working on this fabric at Dolan's?

A. No, sir; I cannot remember.

Cross-Q. 156. Who did work on them?

A. I cannot tell you.

Cross-Q. 157. Can you remember who worked on them?

A. No, sir; I do not pretend to remember the men that worked on any special case unless my attention was especially called to it, and especially where a fabric could be worked on any of our looms.

Cross-Q. 158. That Exhibit Dolan No. 3 would work on any loom?

A. On any loom we had with a proper Jaccard attachment.

Cross-Q. 159. It could be made on the same kind of a loom as Nos. 28 and 30?

A. Not exactly; some difference.

Cross-Q. 160. What difference?

A. If you will notice, in the sample No. 28 is what we call the purling thread, and it is short and positive, while in the

296 Exhibit Dolan No. 3 it is long and variable to a certain extent.

Cross-Q. 161. Fabrics like Nos. 28 and 30 were sent to your regular consignees to be sold to jobbers, were they not?

A. Yes.

Cross-Q. 162. Can you swear that those Nos. 28 and 30 occupy exactly the same position as when they were originally pasted in the book?

A. Yes.

Cross-Q. 163. You remember their being in their present position when you first saw the book?

A. I cannot bring it down to a page, but I think they now occupy the position in which they were originally pasted when the book was made up.

Cross-Q. 164. You do not know about the page?

A. As the pages were not numbered, of course I cannot be positive.

Cross-Q. 165. You did not put them in originally, did you?

A. I did not.

Cross-Q. 166. How long did the looms run on that fabric, "Exhibit Dolan No. 3," as you recollect, when it was first started?

A. I cannot say how long.

Cross-Q. 167. You stopped manufacturing it, didn't you, soon after introducing it, and did not begin again to manufacture it until after the year 1878?

A. No, sir; we run the loom right along on that fabric. We very often changed about, but we run on that fabric for some time. I cannot say how long. We run it for two years, off and on, at any rate, and possibly longer.

Cross-Q. 168. After that you stopped making it and did not begin to make it again until about the time this suit was brought. Is that so?

A. That I cannot say.

Cross-Q. 169. Have you any recollection of making it in the interval?

A. I have no particular recollection.

Cross-Q. 170. Have you any distinct recollection as to how long you continued when you began?

A. I don't know for just how long when we first started, but it was for years, as we often put a loom on a fabric and then
297 changed it and put on something else; then put it back again, or it might possibly go on other looms.

Cross-Q. 171. But there was a long interval in which you did not make it until about the time this suit began, so far as you know. Is that not true?

A. There was an interval; yes.

Cross-Q. 172. Exactly how long you did make it, as you say, you haven't a distinct recollection?

A. It covers a space of two years, at any rate; beyond that I cannot say.

Cross-Q. 173. Were you not in the habit of making written entries when the fabric was adopted, which would show me the adoption of such fabric and the time when adopted?

A. Of the fabric; no, sir.

Cross-Q. 174. What book entries did you make between the years 1868 to 1870 which would serve to identify any fabric as made during those years?

A. Our sample book would show and our cost book would show the different prices of the fabrics made by us; we could tell the kind of yarn they have in them and the cost of the yarn—so many pounds of yarn to the dozen, so many pounds or ounces of such a yarn, so many dollars and cents.

Cross-Q. 175. Would there be any entries in your cost book which you could identify as being made when this fabric "Exhibit Dolan No. 3" was made?

A. Sometimes it might be specified and at others not; there would be nothing positive about it.

Cross-Q. 176. You cannot tell without examining it?

A. I cannot tell without examining it.

Redirect examination by Mr. BENNETT:

Redirect Q. 177. Did you see fabric such as "Exhibit Dolan No. 3" after it was made up into its various forms?

A. Yes.

Redirect Q. 178. Where did the fabric go after it was taken from the loom?

A. It went into what we called the ware-room.

Redirect Q. 179. What was done with it there?

A. It was cut up into the sizes and shape for the various articles it was to be made up into.

298 Redirect Q. 180. And I understand you that fabric such as Exhibit Dolan No. 3 was used for numerous purposes?

A. Yes.

Redirect Q. 181. Did you ever see any hoods, cloaks, and the like that were trimmed with fabrics such as Exhibit Dolan No. 3?

A. I have seen hoods trimmed with it.

Redirect Q. 182. What was done with the various fabrics made from or trimmed with the fabric "Exhibit Dolan No. 3?"

A. They were sent to the commission house to be sold.

Redirect Q. 183. You are positive that fabric such as Exhibit Dolan No. 3 was manufactured at your factory for a period of more than two years?

A. Yes.

Redirect Q. 184. You have stated that some of the sample fabrics contained in book marked "Samples to 1869, Thomas Dolan," were subsequently reproduced; in such cases would samples of the reproduced fabric be placed in the book marked "Samples to 1869, Thomas Dolan," or in your sample book for the year in which they were reproduced?

A. In our sample book for the year in which they were reproduced.

Redirect Q. 185. Then you would only refer to the book marked "Samples to 1869, Thomas Dolan," as a reference book from which to reproduce the fabric?

A. Yes.

Redirect Q. 186. So far as you know, is there contained in the book "Samples to 1869, Thomas Dolan," any specimen of a reproduced fabric?

A. No, sir; no specimen of a reproduction.

Redirect Q. 187. How long, Mr. Salmon, does a design in these knitted fabrics generally last?

A. Sometimes a season; sometimes two or three seasons; very seldom over two seasons.

Redirect Q. 188. From two to three seasons is the ordinary limit of a design in knitted fabrics?

A. Yes.

Redirect Q. 189. Then after the design has been produced for two or three seasons and runs out what is your practice as to reproducing that fabric several years subsequent?

299 A. We generally look them over and when the time comes that we think they can be reproduced to advantage we use the old design with another color, other effects, &c.

Redirect Q. 190. Then the fact that you discontinued manufacturing fabric such as Exhibit Dolan No. 3 after a period of three years was not at all unusual?

A. Not at all.

Redirect Q. 191. How did it run, as to the length of time it was being manufactured, as compared with other designs being manufactured by you at the same time?

A. It had about as long a life as any, with perhaps certain exceptions. There are designs which are particularly desirable and which last a long time, but this had about the usual life.

Redirect Q. 192. Is not the fabric "Complainants' Exhibit Defendant's Nubia A" substantially a reproduction of the fabric "Exhibit Dolan No. 3," in book "Samples to 1869, Thomas Dolan?"

By Mr. BETTS: (Objected to as not called out by the cross-examination and as leading.)

A. It is a reproduction.

Redirect Q. 193. Was it intended as a reproduction of that sample?

By Mr. BETTS: (Same objection.)

A. It was intended as a reproduction of that sample.

Recross-examination by Mr. BETTS:

Recross-Q. 194. Then this Exhibit Dolan No. 3 did not have as long a life as the designs which you call "especially desirable" designs?

A. Yes; that is the way I stated it. There are designs that have an especial run because they are adapted to more lines of goods.

Recross-Q. 195. And this was not such a design?

A. I did not say so.

Recross-Q. 196. What did you say?

A. I say exactly as I did before; a design depends entirely upon

the whims of the buyers, the amount that is sold of them,
300 and one design will take for a longer time than another.

Recross-Q. 197. This design was not one of the designs which took for the longest time, was it?

A. It was not one that took for the longest time.

Redirect examination by Mr. BENNETT:

Redirect Q. 198. Did it take as long as the average design manufactured by you at that time?

A. It did.

Redirect Q. 199. Did it last as long or longer than the majority of the samples in the book "Samples to 1869, Thomas Dolan?"

A. It did; it lasted longer.

Recross-examination by Mr. BETTS:

Recross Q. 200. How about these other styles of the "seaweed" pattern marked 28 and 30—were they popular?

A. They entered into different fabrics and were an earlier production.

Recross-Q. 201. They were produced after you came there?

A. I say they were an earlier production and not impressed so strongly on my mind. Nos. 28 and 30 were light fabrics that were only adapted to light work of certain kinds that I do not profess to have seen done, and was made before I went there.

Recross-Q. 202. It was also made after you went there?

A. Yes; but the sample may have been made before I went there. No. 30 I know was made after January 1, 1868.

Recross-Q. 203. And the other may have been made after that, for all you know?

A. It may have been reproduced.

Redirect examination by Mr. BENNETT:

Redirect Q. 204. Is it your recollection that fabrics such as Exhibits Nos. 28 and 30 were manufactured prior to your going with Dolan & Co.?

A. I think they were.

301 Recross-examination by Mr. BETTS:

Recross-Q. 205. How have you any recollection of what was done in the way of manufacturing at Thomas Dolan & Co.'s factory before you went there?

A. By seeing things that were there when I went there and knowing that they were manufactured by them.

Recross-Q. 206. But how can you swear that these fabrics were manufactured by them before you went there?

A. I saw them there after I got there.

Adjourned to meet at 901 Walnut street, Philadelphia, Pa., at 10.30 a. m. Monday, February 19, 1883.

Subscribed and sworn to before me this — day of ——, A. D. 1883.

—— ——.

237 BROADWAY, NEW YORK, N. Y., *February* 20, 1883.

Met pursuant to adjournment.

Present: As before.

THOMAS DOLAN, the defendant, being called in his own behalf, being first duly sworn, testified as follows in answer to interrogatories propounded by Mr. BENNETT:

Q. 1. What is your name, age, residence, and occupation?

A. Thomas Dolan; age, 48; residence, Philadelphia, Pa.; occupation, manufacturer.

Q. 2. Are you the defendant in the case of Jennings *et al. vs.* Thomas Dolan?

A. Yes.

Q. 3. How long have you been engaged in the manufacture of knitting fabrics?

A. About 21 years.

Q. 4. And always at your present place of business?

A. Yes.

Q. 5. Examine the fabric in book, "Samples to 1869,"
302 Thomas Dolan, marked "Exhibit Dolan No. 3," and state whether or not such a fabric was ever manufactured at your factory; and, if so, when first.

A. We did manufacture such a fabric prior to 1870, but I cannot recall the date; about 1866 or 1867 we first made it.

Q. 6. How are you able to fix this date as being prior to 1870 that you manufactured such a fabric as "Exhibit No. 3" at your factory?

A. In a variety of ways; the most positive is that up to that time we had kept all our samples on files, and the samples began to accumulate. Our method has been to affix a tag to each sample like many in the book, and this tag had the date and number of the sample, the style number of the article the fabric was used for. There came to be quite an accumulation of these samples in 1869, and I instructed Mr. Truitt, at that time manager or assistant in this department, to get a book or a series of blank books and take each of the old samples, place them in a book properly marked—that the samples would be secure and convenient for reference—and according to those instructions the samples were placed in that book, and the "Exhibit No. 3" is one of the lot.

Q. 7. Did you have those books in which you ordered these samples to be placed marked in any way so as to enable you to fix the date prior to which they had been made, should you have occasion to do so hereafter?

A. Yes; the books were all lettered and regularly prepared for the purpose—properly labeled on the outer covering; we have a series of these books from time to time, but we put the samples from the time we commenced in books, and marked them Samples to 1869.

Q. 8. After you had all the accumulated samples placed in books in 1869 did you, for each year thereafter, keep separate sample books, and were they marked accordingly?

A. My recollection is we did. We had kept them in books for each year since that time and marked as this book here.

Q. 9. What does this mark on the outside cover of the book "Samples to 1869, Thomas Dolan," indicate, if anything?

A. It indicates that everything in that book was made prior to 1870.

Q. 10. Who designed that fabric "Exhibit Dolan No. 3?"

A. Henry Boot.

303 Q. 11. In what capacity was Henry Root employed by you at that time?

A. He was there as designer of the knitting department—that is, of the machine department; manager of the machines.

Q. 12. That is, of the warp looms?

A. Yes.

Q. 13. After Boot had designed that fabric did he show it to you, and what action, if any, did you take in reference to it?

By Mr. BETTS: (Objected to as leading and immaterial.)

A. It was the custom for Mr. Boot, as designer, to submit everything to me and if the design was approved by me I instructed him to put it on the large looms, preparatory to making it for the mercantile trade.

Q. 14. State whether or not Mr. Boot submitted a design of fabric such as "Exhibit Dolan No. 3" to you and whether or not you approved of it.

A. I should say yes; of course I cannot recollect the particular design.

By Mr. BETTS: (Same objection.)

Q. 15. The fact of it having been made in quantity would have been sufficient evidence that you approved such fabric?

A. Yes; of course it would not be possible for me to recall the exact facts about that exact design, but there would be no fabric made on the regular looms unless it had been first submitted to me, unless Boot had first submitted the design and it had been approved by me.

Q. 16. Was it the rule at your factory that no fabric was placed upon the large looms to be manufactured until it had been approved by you and you had given instructions that it be made?

By Mr. BETTS: (Objected to as leading and already answered.)

A. Yes.

Q. 17. Did you see fabric such as "Exhibit Dolan No. 3" while it was in the loom being manufactured?

By Mr. BETTS: (Objected to as leading.)

304 A. Yes; I did.

Q. 18. Do you know who operated the loom upon which that fabric was being made?

A. I think his name was McDevitt. I remember there was a peculiarity about the location of loom and there was a peculiarity about the design and the cost of it that impressed it upon my mind.

Q. 19. How long did you continue to manufacture fabric of the construction of "Exhibit Dolan No. 3?"

A. I cannot call to mind exactly how long, but we never started on anything of that kind without we made it at least for a season. We probably began in July and ran right along until the middle of November or whenever the season expired.

Q. 20. Can you state in what quantities you manufactured such fabric?

A. We made it in considerable quantities. The original of "Exhibit Dolan No. 3" was made for nubias, and we subsequently made large quantities of it for trimmings for hoods, for children's coats, and a variety of things of that kind. It was made of identically the same construction as "Exhibit No. 3," but of finer fabric and softer yarns.

Q. 21. What was done with that fabric after it was taken from the looms?

A. It was taken from the looms to what we called the warehouse, where it would be taken charge of by the ones who made it up.

Q. 22. What was done with the fabric at the warehouse?

A. It was made into various articles, such as hoods, caps, children's sacks, and such things.

Q. 23. What was done with the material of the construction such as "Exhibit Dolan No. 3" after it was made up in the wareroom?

A. It was put on the market and sold.

Q. 24. Was fabric of the construction as "Exhibit Dolan No. 3" manufactured in both the light and heavy weight, to which you have referred, sold by you?

A. It was sold by our consignees.

Q. 25. What use was made of the greater part of the fabric of the construction of "Exhibit Dolan No. 3" at the time it was originally made by you?

305 A. The greater part was used for trimmings of hoods, children's circulars and coats, and also in the construction of circulars, some of which were lined inside with silk.

Q. 26. State as near as you can now recollect for how many seasons you continued to manufacture fabric of "Exhibit Dolan No. 3" in both the heavy and the light weight.

By Mr. BETTS: (Objected to as already answered.)

A. I cannot say; I suppose probably we run it in two seasons; would not exceed that. The trimmings have been run longer.

Q. 27. How long is the average life of a design in knitted fabrics?

By Mr. BETTS: (Objected to as immaterial.)

A. Very short; as a rule, not to exceed one season. They are a fancy article and are necessarily short-lived.

Q. 28. Is the fabric "Exhibit Dolan No. 3" a piece of original fabric made at your factory prior to 1870?

By Mr. BETTS: (Objected to as leading.)

A. Yes.

Q. 29. Does this book, "Samples to 1869, Thos. Dolan," contain samples of any fabrics that were made at your factory subsequent to 1870?

(Same objection.)

A. To the best of my knowledge, no.

Q. 30. Who has had personal charge and keeping of the book "Samples to 1869, Thos. Dolan," since the sample were first placed in it?

A. Henry A. Truitt, who was general manager of that department.

Q. 31. Suppose a fabric was designed by your designer, and on being submitted to you was not approved, would a sample of it be kept?

A. Not by me; no; it would go into my waste-basket.

306 Q. 32. Was it your orders to have such kept?

A. No; I would have no use for it.

Q. 33. Was it your orders that samples that were designed, but not accepted, should be preserved and placed in books with samples of fabrics you had made?

A. No, sir; I never gave orders to preserve any fabrics but what had been accepted.

Q. 34. Then the samples contained in book marked "Samples to 1869, Thos. Dolan," are samples of fabrics that were actually manufactured and sold by you prior to 1870?

By Mr. BETTS: (Objected to as leading.)

A. Yes.

Q. 35. State whether or not the samples contained in this book are taken, according to your orders, from the fabric actually manufactured upon the large-size looms and intended for sale.

(Same objection.)

A. Yes; as it was a general order that a sample of everything that was made be kept. That has been a rule through our business.

Q. 36. Do you know to whom the fabric of the construction such as "Exhibit Dolan No. 3," manufactured at your factory prior to 1870, was sent to be sold?

A. Yes; we sent it to Root, Kibbe & Co., of Philadelphia, and also to Townsend & Yale, of New York.

Q. 37. Was the fabric manufactured by you prior to 1870, such as "Exhibit Dolan No. 3," made use of and sold?

A. Yes.

Q. 38. At that time when a sample had been approved by you and ordered to be placed upon the loom, was the fabric so manufactured always used and sold?

A. Yes; it had to be sold at some price.

Q. 39. State whether or not Cornelius Jackson was in your employ during the time fabric such as "Exhibit Dolan No. 3" was being manufactured.

(Objected to.)

307 A. Yes; to the best of my recollection he was.

Q. 40. Do you know whether Cornelius Jackson was engaged in operating a loom at any time upon which was the fabric such as "Exhibit Dolan No. 3?"

A. My recollection is he was in our employ at that time and was engaged at this fabric. His own testimony, however, would be more definite than mine.

Q. 41. During the period from 1865 to 1870 did you give personal attention to your business, and especially to the knit-goods department?

A. Yes; because it was a large and important feature of our business then.

Q. 42. And had you full knowledge of all the different styles of fabric made by you during those years?

A. Yes.

Q. 43. Examine the nubia marked "Complainants' Exhibit Dolan Nubia A" and state if this is one of the nubias manufactured by you.

A. To the best of my knowledge and belief it is. I recognize it as identical in construction and design with that (pointing to "Exhibit Dolan No. 3").

By Mr. BETTS: (Last part of answer objected to as not responsive.)

Q. 44. From what was the nubia "Complainants' Exhibit Dolan Nubia A" patterned or taken from?

A. It was patterned after the "Exhibit Dolan No. 3," in the book marked "Samples to 1869, Thomas Dolan."

Q. 45. Who ordered the fabric "Exhibit Dolan No. 3" to be reproduced and made into nubias such as the one last referred to?

A. The order would first come from me and would then go to Truitt, and Truitt would then communicate the order to his subordinates.

Q. 46. Was it your intention in manufacturing nubias, of which "Complainants' Exhibit A" is one, to have an exact reproduction of the fabric "Exhibit Dolan No. 3?"

(Objected to as leading.)

A. It was to be indentical.

308 Q. 47. Have you ever taken any samples out of this book or, to your knowledge, has any ever been taken out?

A. Never to my knowledge.

Q. 48. They were put in this book, as I understand you, for future reference?

A. For reference only; for reference and record.

Q. 49. And have you known of the fabric "Exhibit Dolan No. 3" being in this book since it was put there?

(Objected to as leading.)

A. Yes; and, to the best of my knowledge and belief, everything that was put there has remained there.

Cross-examination by complainants' counsel:

Cross-Q. 50. Do you mean to be understood that "Exhibit Dolan No. 3" has never been taken out of the book in which it now is after it was placed in it in the manner in which it now is?

A. I do not exactly understand the question as you put it.

Cross-Q. 51. When last was "Exhibit Dolan No. 3" gummed into this book?

A. You mean to infer that it has been taken out and replaced?

Cross-Q. 52. I do so mean to convey my idea.

A. That would be possible. The designer might take it out temporarily to his loom for reproduction.

Cross-Q. 53. What I desire to know now is when this "Exhibit Dolan No. 3" was last placed in that book.

A. I would have to refer you to Mr. Truitt.

Cross-Q. 54. Then you are not prepared to testify in regard to that from your own knowledge that the "Exhibit Dolan No. 3" is now in the book as it was placed into it in 1869?

A. Yes; I am prepared to testify that "Exhibit Dolan No. 3" as it was placed in 1869 is now as it was placed in the book then. It may have been removed temporarily for the purpose of the designer making use of it to reproduce the fabric which is now in controversy.

Cross-Q. 55. You stated that "Exhibit Dolan Nubia A" was made to be exactly like "Exhibit Dolan No. 3." Upon examining it carefully will you still adhere to that view?

309 A. I still say it was made to be identical in design with the original "Exhibit Dolan No. 3," and, to the best of my knowledge and belief, I believe it is the same thing.

Cross-Q. 56. Have you any special recollection of referring to "Exhibit Dolan No. 3" at the time you caused things like "Nubia A" to be made?

A. Yes; for I instructed our people to make the fabric "Nubia A" identical with that old sample in the book (pointing to "Exhibit Dolan No. 3").

Cross-Q. 57. When was that?

A. I do not remember the date, but it was last fall.

Cross-Q. 58. Did you also make nubias like Exhibit Dolan Nubia B?"

A. Yes; I recognize the nubia.

Cross-Q. 59. In making that did you also give instructions to follow "Exhibit No. 3?"

A. No, sir.

Cross-Q. 60. When first did you make anything like Exhibit B?"

A. I cannot swear as to that; I do not remember. Mr. Truitt can answer that question.

Cross-Q. 61. What is your best recollection?

A. My best recollection is that it was in the fall of 1881, but this was not impressed on my mind as firmly as the one you call "A," because the fabric of the nubia was in the contest, and my instructions to our folks was to reproduce fabric "No. 3" identically. The

one you call "Nubia B" I do not have such a clear recollection of, as it was not so strongly impressed upon my memory and I did not follow it up so closely as I did the one made like the sample "No. 3." I think it was some of Mr. Truitt's getting up.

Cross-Q. 62. Do you know by what particular style number this fabric, "Dolan No. 3," was known?

A. I really could not tell. It was used for a variety of purposes and under a great many numbers for nubias, shawls, cloaks, and hoods.

Cross-Q. 63. Your books would show the style numbers, would they not?

A. Our books would give a description of what they were.

Cross-Q. 64. What books are those that give such a description?

310 A. Our descriptive books.

Counsel for the complainant calls for the production of those books.

The WITNESS: Our descriptive books contain merely a description of the article, the history, and the number of it.

Cross-Q. 65. Would your descriptive book show the style number or designation by which articles like fabric "No. 3" were placed upon the market?

A. The book would contain the name which would be given to the article, and a general description of what the article was, a detail of the cost and the weight of the yarn, the loom it was made on, and such things as that, but not the number at that time.

Cross-Q. 66. You have testified that you sold these fabrics to Townsend & Yale. Were they at that time in New York, and did you keep accounts with them?

A. Yes; and we kept an account with them.

Cross-Q. 67. And would those accounts show how much of this material you delivered to them for sale?

A. I presume it would if it could be traced.

Cross-Q. 68. Do you think there is any way of getting at the numbers?

A. Mr. Truitt could answer that question better than I.

Cross-Q. 69. Then you have no personal knowledge?

A I am not prepared to answer that, as Mr. Truitt had immediate charge of all the details.

Cross-Q. 70. When was this book marked "Samples to 1869" made?

A. For that information I would also have to refer you to Mr. Truitt.

Cross-Q. 71. And do you not remember it?

A. I would not especially remember it, but it was made somewhere about the date which it bears on its back—in 1869.

Cross-Q. 72. Is it not probable that that book could have been ordered to be made some time in 1875 or 1876?

A. It is not, as that book was made especially for the purpose

which it is now used for—that is, to contain samples made up to 1869.

311 Cross-Q. 73. And did you begin to make your books as you started in business from year to year?

A. As before stated, it was after a series of years when there had become quite an accumulation of these samples on files that we adopted the system of placing them in books and properly marking them, and this was in 1869.

Cross-Q. 74. And you do not think that this accumulation of which you now speak may have been as late as 1875?

A. I know it was not.

Cross-Q. 75. What makes you sure?

A. Because in the general conduct of our business I know that thing was done long before 1875.

Cross-Q. 76. That is your personal recollection?

A. My positive recollection is that these books were prepared long before 1875.

Cross-Q. 77. How long before you do not know?

A. Not the exact date. Mr. Truitt can tell you, for I think he ordered the books.

Cross-Q. 78. Townsend and Yale were not your only agents?

A. No, sir. Root, Kibbe & Co. acted as such also in Philadelphia.

Cross-Q. 79. Is that Kibbe the same Kibbe who is one of the defendants here?

A. Yes.

Cross-Q. 80. Have you in this book a sample of the fine style, as you term it, of the same design?

A. I could not tell without looking over the book. Mr. Truitt could answer that question better than I.

Cross-Q. 81. Please examine the book and point out any similar fabrics of the lighter style.

A. Well, there is one (pointing to sample marked No. 28), and there is another (pointing to No. 30).

Cross-Q. 82. In ordering the "Dolan Nubia A" to be made, do I understand you that the order was given in the latter part of 1881?

A. My recollection is that it was in the fall of 1881.

Cross-Q. 83. Did you also order the fringe of that nubia to be made in accordance with any sample in your book?

A. I gave the order in a general way, and do not remember that I referred especially to the fringe.

312 Cross-Q. 84. Do you know when last you made anything precisely like "Exhibit Dolan No. 3?"

A. The last, to my recollection, is the article you have in your hand (pointing to Exhibit Dolan Nubia A).

Cross-Q. 85. I refer to the identical thing there in the book. When last did you make a thing like Exhibit No. 3, before commencing the manufacture, in the fall of 1881, of things that you believe to be like that?

A. I do not remember.

Cross-Q. 86. To what extent would you say you made these things like Exhibit No. 3 before the fall of 1881?

A. As I said before, to a considerable extent.

Cross-Q. 87. I do not mean a similar fabric. I mean the identical fabric.

A. We made quite a number of nubias of that identical fabric, and the only reason we did not continue it was that it was a very slow product and made a high-priced article. At that time we could not get the yarns that were available in 1881 for that design. If we could it would have been a much more successful fabric.

Cross-Q. 88. What is the difference?

A. The yarn in Exhibit No. 3 is woolen, while in No. 28 it is a worsted.

Cross-Q. 89. How does the substitution of worsted yarns for woolen yarn affect the price or appearance of the goods?

A. It gives a loftiness that the worsted yarn is not capable of, although the design and construction is identically the same; gives it a different appearance to an impractical eye.

Cross-Q. 90. Do I understand you that this thing (Exhibit No. 3) was made on a certain kind of a warp loom?

A. It is made on a warp loom; yes.

Cross-Q. 91. Can you describe that warp loom?

A. It is an ordinary cross-gauge warp loom, operating needles; an English rotary warp loom.

Cross-Q. 92. Was that loom made in this country?

A. It was an English loom.

Cross-Q. 93. And imported by you?

A. I am not sure whether that particular loom was imported by me.

Cross-Q. 94. Is that loom still in your possession?

313 A. I am not sure, but I think it is in the possession of Mr. Button.

Cross-Q. 95. On what kind of a loom was "Exhibit Dolan Nubia A" made?

A. I cannot say whether it was made on a warp loom or a double-ribbed machine, but it would make no difference at all so far — the loom is concerned, as it could be made on either machine.

(Last part of the answer objected to as irresponsive.)

Cross-Q. 96. How is it you do not know on what loom Exhibit "A" was made and you do know on what loom "Exhibit Dolan No. 3" was made?

A. Because when Exhibit No. 3 was made I was giving that department special attention, and the loom was located right at the door where I was going in every day, while when we were making that (pointing to Exhibit A) I gave the department no special attention, and therefore cannot state positively whether it was made on a warp loom or a double-ribbed machine, but I say so far as its construction is concerned the loom would make no difference.

Cross-Q. 97. Do you believe Exhibit A could be made on a warp loom?

A. Yes; I do.

Cross-Q. 98. Are you sure?

A. To the best of my knowledge and belief, it could. Mr. Truitt could answer that question. I simply gave instructions to reproduce in that Exhibit A the fabric Exhibit No. 3 identically as it is there, and my recollection is that it was made on a warp loom.

Cross-Q. 99. Or do you know positively on what kind of a loom Exhibit Nubia B was made—do you?

A. Not positively, but my recollection is that it was also made on a warp loom.

Cross-Q. 100. When last did you sell fabrics like Exhibits Nubias "A" and "B?"

A. I think it was in the season 1881.

Cross-Q. 101. What do you mean by "season?"

A. I mean the fall and winter.

Cross-Q. 102. Your own recollection as to the time when
314 you first ordered fabrics like Exhibit A to be made is not very clear, is it?

A. Yes; it is very clear; not the exact date, perhaps, but the circumstances which brought it up makes it very clear.

Cross-Q. 103. How clear is your recollection?

A. The matter was brought to my mind forcibly by having this suit with Jennings, and I then instructed my factory to reproduce exactly in design and construction the old sample, which I believe is marked Exhibit No. 3.

Cross-Q. 104. That was when?

A. That was in the fall of 1881.

Cross-Q. 105. I asked you whether you were very clear about the time.

A. I remember the circumstances particularly why I gave instructions to reproduce that sample No. 3 identically, and I remember the fact that I was a good deal out of humor because they did not obey my instructions in the first place; that if they had reproduced that identical design in the first place there would have been much less trouble about it, and I took the matter personally in charge.

Redirect examination by Mr. BENNETT:

Redirect Q. 106. Can you swear positively that the identical fabric "Exhibit Dolan No. 3" in the book marked "Samples to 1869, Thomas Dolan," was made at your factory prior to 1870?

A. To the best of my knowledge and belief, yes.

Redirect Q. 107. And such fabric was sent out by you in the regular course of your business?

A. Yes.

Redirect Q. 108. Did you, during the period from 1865 to 1870, keep a book in which you described the construction and appearance of the knitted fabrics made by you?

A. I do not know that there was a description of just what the fabric was, but a name would be given to the fabric, and that would

be entered in this book, together with the cost of manufacture of the article, &c.

Redirect Q. 109. Would Mr. Truitt know fully in reference to these matters?

A. He was familiar with the details and could answer you more satisfactory than I could.

315 Redirect Q. 110. I understand you that prior to 1870 you made at your factory fabric of the same construction as the Exhibit Dolan No. 3, but of lighter yarn.

A. Yes; it was identical in design and the same in construction. They sometimes altered the construction by using but one pillar or by using two pillars, and the design would be the same, but with this slight difference in construction.

Redirect Q. 111. Did you also during that same period manufacture a single-pillared fabric?

(Objected to as incompetent and not proper redirect examination.)

A. Yes; and I think there is evidence of that in the book.

Redirect Q. 112. Did you, prior to 1870 and during the time you were manufacturing fabric such as "Exhibit Dolan No. 3," manufacture fabric such as Nos. "28" and "30?"

(Objected to as leading.)

A. I do not know that they were both made at identically the same time, but they were both made prior to 1870.

Recross-examination:

Recross-Q. 113. Does "No. 3" in the book "Samples to 1869, Thomas Dolan," fully show the double-pillared fabrics made by you for the purpose of making the same up into nubias?

A. Yes; that is what that fabric was made for. I believe that sample piece (pointing to Exhibit No. 3) was cut from a piece of nubia cloth.

Recross-Q. 114. And that nubia cloth was woven or knit, whichever you call it, in what length?

A. Into nubia lengths. It run along about four or five feet.

Redirect:

Redirect Q. 115. Were the nubia lengths separated on the loom or were they taken to the wareroom and there cut up?

A. They were taken to the wareroom and there cut. The fabric was woven into one continuous length, and then taken to the wareroom and cut into nubia lengths.

316 Recross:

Recross-Q. 116. Then you must have misunderstood my question, as I wanted to ascertain from you in what lengths this fabric was woven.

A. It was woven, as I say, in two pieces, whatever the warp would make; might be 100, 200, or 300 feet, according to the size of the

warp it was put on, and then subsequently cut for nubias. My recollection is that two widths were made on a loom at that time.

Subscribed and sworn to before me this — day of April, A. D. 1883.

——— ———.

MARY W. KIMBLE, a witness called on behalf of defendants, being first duly sworn, testifies as follows:

Complainants' counsel objects to so much of the testimony of this witness as may tend to show prior knowledge or use of the patented improvements, for the reason that the name of the witness has not been set up in the answer as required by the statute.

Defendant's counsel replies that this witness is called merely to corroborate the statements testified to by the witnesses whose names are cited in the answer.

By Mr. BENNETT:

Q. 1. What is your name, age, residence, and occupation?

A. Mary W. Kimble; age, 39; occupation, forelady for Mr. Truitt, and I reside in Kensington, Philadelphia.

Q. 2. Do you know Thomas Dolan, the defendant in one of these cases?

A. Yes; I went in his employ the first of March, 1865.

Q. 3. When did you leave his employ?

A. The last day of December, 1882.

Q. 4. What position did you hold in the employ of Thomas Dolan?

A. The first work I did there was trimming and cutting, and I gradually worked myself up till I became forelady of the department.

317 Q. 5. How long were you a cutter and trimmer?

A. Six or seven years; maybe longer.

Q. 6. And after that you were forelady of the trimming department?

A. After I went on shawl-work and from that to different things in the fancy-goods department.

Q. 7. In what part of Mr. Dolan's factory were you located?

A. In the wareroom all the time.

Q. 8. What was the nature of the work done in the wareroom?

A. Cutting, trimming, and tying up work, receiving it and pack- it away—handling all the work that came from the weaving room.

Q. 9. Then all the material that was manufactured upon the looms at Dolan's factory was brought to the wareroom where you were located?

A. Yes.

Q. 10. Examine the fabric in the book "Samples to 1869, Thomas Dolan," marked "Exhibit Dolan No. 3," and state if you have ever seen any such fabric; and, if so, when first, and where.

A. I cut that (pointing to "Exhibit Dolan No. 3") in both light and heavy weight for trimming, at Mr. Dolan's factory, as much as

12 or 14 years ago. I remember handling it for awhile, and then it went away and came back again; and I remember making the remark to some one around me that it looked like olden times to see that stuff back again.

Q. 11. When did you see it again, and when did it come back?

A. It was several years, and I distinctly remember it when they commenced making it again, two or three years ago.

Q. 12. About how long after you entered Mr. Dolan's employ did you first have fabric such as "Exhibit Dolan No. 3" brought to your room?

A. About three years after I first went there, to the best of my recollection.

Q. 13. After it went out of use and before it returned how long was it?

A. It was a number of years; could not give you the date.

Q. 14. After fabric "Exhibit Dolan No. 3" was brought to the wareroom the first time what use was made of it?

318 A. The first time I handled it it was as trimming, and the last time—that is, lately—it was scarfs.

Q. 15. By "the last time" you mean when it reappeared within the last two or three years?

A. Yes.

Q. 16. When it was first made at Dolan's factory, as you say, 12 or 14 years ago, state the various ways in which it was used.

A. In trimming for hoods, around the face and cape of the hood.

Q. 17. And I understand you it was one of your duties to cut that fabric up, to be used as trimming and for other purposes?

A. Yes.

Q. 18. Do you know what became of the articles that were made in the wareroom after they left there?

A. Nothing more than that they were shipped to New York and other places.

Q. 19. You had nothing to do with them after cutting and trimming the goods?

A. Not after cutting, trimming, and tying them up; then we took them around to the other side of the room.

Q. 20. Then, if I understand you correctly, you would cut the fabric such as "Exhibit Dolan No. 3" as it came from the wareroom into different forms of trimmings, to be used by the sewers who were engaged in making up the various articles?

(Objected to as leading.)

A. Yes.

Q. 21. Do you recognize any other samples in the book before you as having been made at about that time?

A. Yes; I recognize that and that (pointing to samples on page with Exhibit Dolan No. 3), and on the next page (pointing), this was made at about the same time. Those are all old style. I did not handle the webbings; still some of them are familiar, as I remember having often seen them in the place. This is a style that we used this purl lace as a trimming on (the sample referred to is

enclosed in a pencil mark on page marked at the bottom in pencil "K").

Q. 22. That is the style in which you made up the trimming from the fabric "Exhibit Dolan No. 3?"

319 A. Yes; that is the way the mark used to come in—trimmed up in that style. This is all familiar to me—the shawl trimming (referring to samples on page marked in pencil "D"); lots of these I have cut as shawl borders. These were all made years ago (pointing to samples on page marked in pencil "C").

Q. 23. Then you recognize the various other sample fabrics to which you have referred as having been made at Mr. Dolan's factory at or about the time "Exhibit Dolan No. 3" was made there?

(Objected to as leading.)

A. Yes.

Q. 24. These other various fabrics were also handled by you in the ware-room at Dolan's factory?

A. Yes.

Q. 25. Were the various articles that were made up in the ware-room at Dolan's factory packed there ready for shipment?

A. Yes.

Q. 26. State whether or not the articles upon which the fabric such as "Exhibit Dolan No. 3" was used for trimming, after being completed, were made ready for shipment?

A. Yes.

Q. 27. How much fabric such as "Exhibit Dolan No. 3" was brought to the wareroom?

A. As regards the weight I cannot tell, but there was a lot of it. Quite a number of different articles were made, and we used it as trimming on them.

Q. 28. Can you state the length of time you used that fabric as trimming?

A. Not clearly; I could not.

Q. 29. About how long, to the best of your recollection?

A. It was several weeks, but really I would not like to say to the very week or day.

Cross-examination by Mr. BETTS:

Cross-Q. 30. Give me the names of any one who worked with you in the ware-room while on the trimmings you have referred to.

320 A. I was the only trimmer and cutter at that time. There were a number of young ladies in the ware-room at that time as sewers—Miss Boyd, Miss Gamble, and some others. A great many have been married since; some have died.

Cross-Q. 31. You never saw this fabric then in anything except trimming, did you?

A. Not that I remember; principally trimming.

Cross-Q. 32. In nothing else until lately?

A. Then it was in scarfs.

Cross-Q. 33. Lately it was used in making scarfs?

A. Yes.

Cross-Q. 34. At the time you first saw it, it was only used as a trimming for hoods?

A. Only as a trimming, as I remember.

Cross-Q. 35. You speak of using this for both light and heavy work?

A. Yes; some was lighter than this (pointing to "Exhibit Dolan No. 3").

Cross-Q. 36. The sample "Exhibit Dolan No. 3" is what you called the heavier?

A. Yes.

Cross-Q. 37. Do you see any sample on the book "Samples to 1869" which is what you would call the light weight of the same trimming?

A. There may be some. We would call it lighter if it was made of finer yarn or if they used only one pillar—a single chain stitch.

Cross-Q. 38. Did they use a lighter yarn at that time?

A. That I could not tell; but they made a lighter weight, which was the single pillar.

Cross-Q. 39. And the lighter trimming was used on these goods?

A. I think at that time they used both their light and heavy trimming.

Cross-Q. 40. Both the lighter and the heavier trimming with that "Exhibit Dolan No. 3?"

A. Not heavier, but lighter than that is.

Cross-Q. 41. That is, "Exhibit Dolan No. 3" is the heavier weight?

A. Yes; it is what I call the heavier trimming.

Cross-Q. 42. After you used materials for trimming you never knew where they went outside the factory, did you?

321 A. I did not know where they went, of course.

Cross-Q. 43. And you do not know whether they were ever sold or used, of your own knowledge, do you, outside of the factory?

A. I know the goods were sold, but not by what firm, unless it was by Townsend & Yale, of New York, who used to be our agents. Whether they were the agents at that time I cannot say.

Cross-Q. 44. Can you tell me where I can find a hood trimmed with the material like "Exhibit Dolan No. 3" and which was made at that time?

A. No, sir; I could not.

Cross-Q. 45. Can you mention any person likely to enable me to find such a hood?

A. I cannot do that. If we had been allowed to do as they are in most other mills it would be different, but we were never allowed to take even a strand of yarn out of the place.

Cross-Q. 46. When did you first see "Exhibit Dolan No. 3?"

A. As near as I can remember, twelve or fourteen years ago.

Cross-Q. 47. Do you mean to say that you saw this very "Exhibit Dolan No. 3?"

A. No; what I saw was similar to that.

Cross-Q. 48. When did you see this particular one marked "Exhibit Dolan No. 3?"

A. That is what I would call the last that was made, two or three years ago.

Cross-Q. 49. You think that is a piece of the last that was made two or three years ago, do you?

A. It looks to me, but still it might be a piece of the old fabric.

Cross-Q. 50. You cannot swear it was a piece of the old fabric, can you?

A. I would not like to swear, but it is very much like it.

Cross-Q. 51. What was the width of the material you used for puffing and trimming like this No. 3?

A. I should say that it is just about lace width.

Cross-Q. 52. Not as wide as the piece in the book?

A. No, sir.

Cross-Q. 53. What was the length of this trimming you used on hoods?

322 A. That would depend upon the size of the work I would have to cut it for.

Cross-Q. 54. How much would you use for each hood on an average?

A. I should think from two to three yards. If it was a small-sized hood two and three-quarters would do, and of the second size it would take three yards. The size of the hoods would vary. Some of it would take four yards of trimming, and we have cut four and one-half yards. I think I would be safe in saying two and one-half to three yards to the smallest and four and one-half to five to the largest size.

Cross-Q. 55. And these hoods were sent to Townsend & Yale, of New York, as you understood?

A. I am not positive, but I think that they were agents at that time.

Cross-Q. 56. And what year was it that you first saw this kind of trimming?

A. I should think about the year 1867 or 1868. I went with Mr. Dolan in 1865, and I think it was about three years after I went there that I first saw this trimming.

Cross-Q. 57. And can you give me any idea of how long it was used in your department at that time?

A. I cannot say how many weeks—they were making so much of that kind of fancy work—but they must have been on this for several weeks.

Cross-Q. 58. Can you swear that this was in the year 1867 or 1868?

A. I would not like to swear, but I think it was about that time.

Cross-Q. 59. Is there any circumstance or fact by which you can fix the date as at that time?

A. Only that I think it was two or three years after I went to Mr. Dolan's. Perhaps some of the other girls that were there could do it.

Cross-Q. 60. That is the only way, is it?

A. I knew I cut the trimmings and the other girls know they made the work, and I think it was, as I said before, 12 or 14 years ago.

Cross-Q. 61. Can you not fix the time by any circumstance?

A. I would not like to, for I might vary for a year or so.

Cross-Q. 62. Did you ever see trimmings at Dolan's like
323 the trimmings in this book, "Samples to 1869, Thomas Dolan," with the initials "H. A. T." and the Nos. "28" and "30?"

A. Yes; cut plenty of it.

Cross-Q. 63. When was that?

A. That is the stuff we call "seaweed;" it was made about the same time—12 or 14 years ago.

Cross-Q. You used that as a trimming on hoods, did you?

A. Yes; I cut it as a trimming just like No. 3.

Cross-Q. 65. This is a trimming (pointing to No. 28), and this is a trimming, you say (pointing to No. 3)?

A. Yes; one is light and the other is heavy. I handled this (pointing to No. 3); that I will take an oath upon.

Cross-Q. 66. That like No. 28 is the trimming you put on hoods, is it not?

A. Yes; the same thing.

Cross-Q. 67. And No. 30 also, did you not?

A. Yes.

Cross-Q. 68. You knew that by the name of "seaweed," as I understand?

A. Yes; that is the name I think was given it.

Cross-Q. 69. As to No. 28, what width did you put it on the hood?

A. Just about that width, or in some cases they wanted it narrower.

Cross-Q. 70. About the width shown in the book?

A. Yes.

Cross-Q. 71. How about No. 30 as to width?

A. About the same width; that was the children's sacks. I think I cut it in two widths. This we call "purl" work; it is all "purl-work."

Cross-Q. 72. Then Nos. 28 and 30 is what you call "purl" work?

A. They called that Nos. 28 and 30 "seaweed," but this No. 3 we called purl lace work, and I now remember it by recollection of the "seaweed."

Cross-Q. 73. Then the "seaweed" 28 and 30 was what you remember trimming hoods with?

A. Yes; and with the No. 3.

Cross-Q. 74. And that was the kind you trimmed hoods with at Dolan's in 1867 and 1868?

324 A. Yes; we trimmed hoods with it and also the double pillar.

Cross-Q. 75. Do you recognize any of the other fabrics on the same page as "28" and "30?"

A. Yes; all these samples are familiar.

Cross-Q. 76. Were these "28" and "30" what you called the light weights—what you used to trim hoods?

A. Yes; that seems to be what I would call the light weights. I guess the heavier weight was of heavier yarn or the double pillar.

Cross Q. 77. You do not remember distinctly which it was?

A. Not distinctly.

Cross-Q. 78. All you know is that some was heavier and some lighter?

A. Yes.

Cross-Q. 79. Though it might have been due to the weight of the yarn, as far as you know?

A. It may have been the weight of the yarn or the double pillars.

Cross-Q. 80. Was No. 28 in the book "Samples to 1869" made in any quantity?

A. Yes.

Cross-Q. 81. And did the girls you have mentioned work on that?

A. Yes.

Cross-Q. 82. And was it put onto hoods?

A. Yes.

Cross-Q. 83. Then No. 28 is the lightest weight you remember, is it not?

A. As near as I can remember, that is the lightest weight.

Cross-Q. 84. There may have been lighter weights, but you do not recollect, not having it before you?

A. I do not remember any lighter than this No. 28.

Cross-Q. 85. But there may have been?

A. Yes; the heavier weight was of double-pillared and of heavier yarn.

Cross-Q. 86. All you recollect is that there was a heavier weight that was used for trimming hoods?

A. Yes.

Cross-Q. 87. When the fabric came in lately to be made again into scarfs you recollect that it was similar in appearance to that fabric you call "seaweed?"

A. Yes, the first of it.

Redirect examination by Mr. BENNETT:

Redirect Q. 88. In what condition did the fabric "Exhibit Dolan No. 3" come to you in the ware-room?

A. Laid out flat and smooth; large bundles of it.

Redirect Q. 89. About what was the width of the fabric "Exhibit Dolan No. 3" when it was first made at Dolan's and as it came to you in the ware-room?

A. As near as I can remember, it was from four to five chains.

Redirect Q. 90. Do you mean it came to you in that width, as you cut it up in that width?

A. It came in that width.

Redirect Q. 91. Made into lengths as required for trimming?

A. Yes.

Redirect Q. 92. Is the "Exhibit Dolan No. 3" what you term the heavy fabric?

A. Yes.

Redirect Q. 93. Did you use the fabric "Exhibit Dolan No. 3" about the same time you used the fabric marked "28" and "30?"

A. Yes.

Redirect Q. 94. And did you use them for the same purpose?

A. Yes, as trimming.

Redirect Q. 95. When Mr. Dolan commenced, within the last three years, to manufacture what is now termed "purl-lace fabrics" did he reproduce both specimens of fabrics, viz., "Exhibit Dolan No. 3" and "No. 28?"

A. We first had it in both single and double pillar; then he reproduced both "Exhibit No. 3" and "No. 28," but they come in wider strips.

Redirect Q. 96. When those fabrics were first made at Mr. Dolan's factory, about twelve or fourteen years ago, as you have stated, were they known as single and double pillared fabrics?

A. I believe that is what the men called them.

(Objected to as hearsay.)

326 Redirect Q. 97. All you know is that one fabric was made with a single and the other with a double pillar?

(Objected to as leading.)

A. Yes, I would hear them talk of a single and double pillar, and I did not know what it was, so I asked the men, and they explained it to me.

Redirect Q. 98. The articles made up in the ware-room, upon which fabric "Exhibit Dolan No. 3" and "No. 28" were used as trimming, were sent to the agents of Mr. Dolan, whoever they might have been at that time?

A. Yes, I think they were sent to Townsend & Yale.

Redirect Q. 99. Which fabric did you use the most of when it was first produced, twelve or fourteen years ago, "Exhibit Dolan No. 3" or "No. 28?"

A. "No. 28."

Redirect Q. 100. When those two fabrics were reproduced recently of which was the most used?

A. I would not be positive, but I think it was of the double pillar.

Recross-examination:

Recross-Q. 101. When you started to make these fabrics lately did you begin by making a single or double pillar first?

A. I would not be positive, but I think it was the single pillar.

Recross-Q. 102. Can you swear which it was?

A. No, sir.

Recross-Q. 103. How long did you continue to make one of the two styles before you commenced making the other, whichever it was?

A. I could not say. I was not cutting the goods when they were reproduced three or four years ago.

Recross-Q. 104. Yet you have a very distinct recollection of cutting that fabric No. 28 in 1867 or 1868?

A. Yes; 12 or 14 years ago.

Recross-Q. 105. And you also have a distinct recollection of a heavier style, have you?

A. Yes; it may have been called heavier on account of the double pillar.

327 Recross-Q. 106. You cannot swear positively that the heavier had a double pillar, can you?

A. No, sir; but I think it had.

Recross-Q. 107. And can you swear that fabric such as "Exhibit Dolan No. 3" was made at Dolan's factory 12 or 14 years ago?

A. Yes.

Redirect by Mr. BENNETT:

Redirect-Q. 108. Can you swear such fabric had a double pillar?

A. I know we had a heavy trimming and we generally called the double pillar the heavy stuff.

By Mr. BETTS:

Redirect Q. 109. But you can't swear that the fabric you say you cut like "Exhibit Dolan No. 3" at Dolan's in 1867 or 1868 had a double pillar, can you?

A. No, sir; but we always called that the heavier that had the double pillar. That is how I learned what was the double pillar, by asking what was the heavier, and they told me the double pillar was.

(Last part of answer objected to as hearsay.)

By Mr. BENNETT:

Redirect Q. 110. You observe that the sample fabric "Exhibit Dolan No. 3" is a double pillar, don't you?

A. Yes.

Redirect Q. 111. You do know, do you not, that the fabric with the double pillar, such as "Exhibit Dolan No. 3," was made at Dolan's factory 12 or 14 years ago?

A. Yes.

By Mr. BETTS:

Redirect Q. 112. But you are not sure whether it had a double pillar or not, are you?

328 A. I am not positive, but I know they made with double and single pillar fabrics.

Subscribed and sworn to before me this — day of March, 1883.

——, ——.

WILLIAM A. STEWART, a witness called on behalf of defendants, being first duly affirmed, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Wm. A. Stewart; age, 37; residence, Philadelphia; occupation, with Wm. Mann, stationer and blank-book manufacturer.

Q. 2. How long have you been with Mr. Mann?

A. Nearly 20 years.

Q. 3. What were your duties during 1869 and thereabout?

A. I was what you might call assistant order clerk at that time.

Q. 4. Examine the book now handed you, marked "Samples to 1869, Thomas Dolan," and state if you have ever seen that book before.

A. That I cannot say.

Q. 5. Have you ever seen any book similar to that?

(Objected to as immaterial.)

A. Yes.

Q. 6. Did Thomas Dolan or Thomas Dolan & Co. at any time order from you any book similar to the one now before you? If so, and what directions, if any, were given as to the making of them?

A. We have in our order book, under date of Aug. 27, 1869, an entry for four books, the description of which and the marks on which correspond to this book, "Samples to 1869, Thomas Dolan."

(The answer is objected to as incompetent.)

Q. 7. At the time these books were ordered were any orders given as to the making of them; and, if so, how were they to be marked?

329 A. There is an entry on our order book that they were to be marked "Samples to 1869," and with a name, "Thomas Dolan," the same as this book is marked.

(Answer objected to as incompetent, as it does not appear that the witness is testifying from his own knowledge, but from a written memorandum.)

Q. 8. Was the order for these books given to you?

A. That I cannot say.

Q. 9. From what source do you derive the information to which you have just testified?

(Objected to as incompetent.)

A. From myself alone and the entries on our books.

Q. 10. You have taken it from the order book for 1869?

(Same objection.)

A. Yes.

Q. 11. Is the book now before you marked in accordance with the entry on your order book?

(Same objection.)

A. Yes.

Q. 12. How does that book correspond with the size of the books ordered at that time and included in that order?

(Objected to, as it does not appear that the witness knows the size of those books.)

A. To the best of my knowledge and belief, it corresponds exactly.

Q. 13. In your opinion is that one of the identical books that was included in that order?

(Objected to as incompetent and immaterial.)

A. I should say it was.

330 Q. 14. You have stated that these books were ordered by Mr. Dolan August 18, 1869. State when they were delivered to him.

A. August 27, 1869.

(Objected to unless the witness is shown to have personal knowledge.)

Q. 15. From what source did you derive your information as to the date of delivery?

A. From our delivery book and the date on our order book.

Q. 16. Have you any other entries on your book that relate in any way to the ordering of these books?

A. Simply this one entry.

Q. 17. And those entries contain the date of the order, the date of delivery, and show the fact that they were actually delivered to Mr. Dolan?

(Objected to as wholly incompetent and leading.)

A. Yes.

Q. 18. Since that time have you manufactured any such books for Mr. Dolan and marked them as that order calls for?

A. That I could not say unless I made an examination of our books.

Q. 19. This order included four books, of which you believe the book now before you to be one?

(Objected to as leading.)

A. Yes.

Q. 20. Can you tell from an examination of that book whether or not it is your book?

A. From its appearance I should say it was.

Q. 21. All the facts in relation to which you have testified, I understand, you have taken direct from your order book?

(Objected to as incompetent.)

A. Yes.

331 Cross-examination:

Cross-Q. 22. Did you make the entries in that order book yourself?

A. I did not.

Cross-Q. 23. You did not make any of the entries to which you have referred in connection with these books?

A. No, sir.

(Counsel for complainants now further objects to the evidence of this witness concerning these books and entries as incompetent, and will move to strike the same from the record at final hearing.)

Cross-Q. 24. Have you done work for Mr. Dolan since these books were made up to the present time?

A. Yes.

Cross-Q. 25. In every year, more or less?

A. Yes.

Cross-Q. 26. Have you made other sample books for Mr. Dolan since 1869?

A. We have.

Cross-Q. 27. And all about the same size as the books now before you?

A. As the book appears lying there; yes.

Cross-Q. 28. You did not deliver these books to Mr. Dolan yourself, did you?

A. No, sir.

Cross-Q. 29. You did not take the order for them personally, did you?

A. Can't say.

Cross-Q. 30. You did not manufacture them yourself, did you?

A. No, sir.

Cross-Q. 31. Nor saw them manufactured?

A. No, sir.

Cross-Q. 32. You did not put the lettering on it, did you?

A. I will qualify my last answer: I may have seen that book, as my duties required me to go very often in our bindery.

Cross-Q. 33. You don't recollect that particular book?

A. No.

332 Cross-Q. 34. You did not letter it or recollect seeing it lettered, do you?

A. At present, no.

Cross-Q. 35. You do not know of your own knowledge when Dolan received them, do you?

A. Only so far as our delivery book shows, and that is presumed to be correct.

Cross-Q. 36. Your evidence is based on presumption formed on the entries which you did not make yourself?

A. You might call it so.

Redirect:

Redirect Q. 37. Have you any doubt as to the correctness of the entries in the order book?

(Objected to as immaterial.)

A. Not the least.

Redirect Q. 38. Will you examine your order books since September, 1869, and see if any books have been ordered by Thomas Dolan & Co. such as the one now before you, to be marked in that manner, or whether any book so marked has been delivered to him?

A. Yes.

(Result of examination affixed hereto.—Stenographer.)

Redirect Q. 39. How long would it take you to make that examination?

A. Several hours.

Redirect Q. 40. Could you make it yet to-day and give us the result?

A. I doubt very much if I could. I have an engagement at 6.30 p. m.

Redirect Q. 41. Will you make the investigation called for and send the result of it to the examiner, that it may be annexed to your deposition?

A. Yes.

Defendants' counsel states that if complainants' counsel will extend the time within which to take testimony, thus affording
333 him opportunity to again produce the witness, he will do so; otherwise he will pursue the course above indicated, viz., to have the investigation made and the result of it submitted by the witness to the examiner.

Complainants' counsel declines to be shut out from his right to cross-examination in this summary method, and is now ready to cross-examine the witness or anything that may be asked him, and objects to the introduction in evidence of any such statement as referred to by counsel for defendants being annexed to the deposition, and denies the right of the examiner to so annex it or certify to it.

By Mr. BENNETT:

Q. 42. Will you examine your order books since September, 1869, and see if any books had been ordered by Thomas Dolan & Co., such as the one now before you, to be marked in that manner, or whether any book so marked has been delivered to him?

A. I have examined our order book since September, 1869, and fail to find that we have made or furnished since that time any books marked like the one examined.

WM. A. STEWART,
*With Wm. Mann, Stationer, 529 Market Street, Philadelphia.*

February 19, 1883.

Subscribed and sworn to before me this — day of ——, A. D. 1883.

——— ———.

334 901 WALNUT STREET,
PHILADELPHIA, PA., 10.30 A. M., *February* 19, 1883.

Met pursuant to adjournment.

Present: As before, and GEORGE BECK, a witness called on behalf of defendants, who, being first duly sworn, testified as follows:

By Mr. BENNETT:

Q. 1. What is your name, age, residence, and occupation?

By Mr. BETTS: So much of the testimony of this witness as may be given to show prior knowledge and use objected to on the ground that the name of the witness has not been set up in the defendants' answer, as required by the statutes.

Defendants' counsel states that the witness is called in corroboration of the facts testified to by the witnesses cited in the answer.

A. George Beck; age, sixty-five; residence, No. 4548 Miller street, Philadelphia; and I am working on a double-ribbed machine with Mr. Springthorp, on Wakefield street, in Philadelphia.

Q. 2. Do you know Thomas Dolan, the defendant in one of these cases?

A. Yes.

Q. 3. Have you ever worked for Thomas Dolan, or the firm of which he is the senior member; and, if so, when and for how long?

A. I went to work for him the first week I landed in America—in October, 1863—and I worked for him continuously until December, 1872.

Q. 4. Have you ever worked for Thomas Dolan or Thomas Dolan & Co. since that time?

A. No.

Q. 5. When did you land in this country?

A. On the 21st of October, 1863.

Q. 6. Where was the first place you worked in this country?

335 A. At Thomas Dolan's factory, and I stayed there right along until December, 1872.

Q. 7. What was the occasion of your leaving Mr. Dolan's factory in December, 1872?

A. Because he stopped all his men and hired girls in their places.

Q. 8. How were you occupied during the time you were working for Thomas Dolan or the firm of which he was senior member?

A. I was working on warp loom.

Q. 9. Are you a professional weaver or knitter?

A. Yes; I have worked at the business for over 40 years.

Q. 10. Examine the sample fabric in the book "Samples to 1869, Thomas Dolan," and marked "Exhibit Dolan No. 3," and state if you have seen such fabric before; and, if so, when first, and where.

A. I have seen it in England.

Q. 11. Have you ever seen such fabric as "Exhibit Dolan No. 3," contained in the book marked "Samples to 1869, Thomas Dolan," in this country; and, if so, when first, and where?

A. I do not know anything about the books, but I have seen fabric like that (pointing to "Exhibit Dolan No. 3") being made at Dolan's factory while I was there as much as 12 or 13 years ago. It was made in the room I worked in at Dolan's factory, on the third warp loom in front of mine.

Q. 12. Did you see fabric such as "Exhibit Dolan No. 3" at the factory of Thomas Dolan & Co. while it was being manufactured upon the loom?

(Objected to as leading.)

A. I saw it while Cornelius Jackson was working it on his loom. He worked it.

Q. 13. When was it you saw Cornelius Jackson working fabric such as "Exhibit Dolan No. 3" upon his loom at Thomas Dolan's factory?

(Objected to as leading.)

A. I guess it was 12 or 13 years ago.

Q. 14. State whether or not it was before or after your leaving the employ of Thomas Dolan & Co. that you saw fabric such
336 as "Exhibit Dolan No. 3" manufactured by Cornelius Jackson at the factory of Thomas Dolan & Co.

A. It was before I left.

Q. 15. How long before your leaving Mr. Dolan's employ was it?

A. Two or three years. I could not say exactly.

Q. 16. And since December, 1872, you have not been in the employ of Thomas Dolan or the firm of which he is a member?

A. No, sir.

Q. 17. Do you know who designed that fabric, "Exhibit Dolan No. 3?"

A. I believe Henry Boot designed it. He used to make all the patterns for the looms.

Q. 18. Was he the designer and foreman of the room in which the warp looms were located at that time?

(Objected to as leading.)

A. Yes.

Q. 19. Can you swear positively that fabric such as "Exhibit Dolan No. 3" was made at the factory of Thomas Dolan before you left there in December, 1872?

(Objected to as leading.)

A. Yes; it was before I left.

Q. 20. Do you know what became of this fabric after it left the room?

A. No, sir; only that it was taken to the ware-room.

Q. 21. Did you make an affidavit for me in this case on December 11, 1881?

A. Yes.

Q. 22. State whether or not some few days before making that affidavit you were called upon by any party or parties and asked certain questions as to what was done at Thomas Dolan & Co.'s factory during the time you were there; and, if so, who the parties were and what they asked you.

(Objected to as immaterial.)

337 A. There was a young man who called on me and said he was a partner of Mr. Jennings. He pulled a piece of work out of his pocket like that you call "Exhibit Dolan No. 3," only it was in colors, and he asked me if I knew that and I told him yes. He then asked me if Dolan made such stuff, and I said, Yes; he has

made it. Then he said this was made at Dolan's, and I told him I could not say whether that piece was made there or not, but that I had seen them make that work there.

Q. 23. Did you tell that young man when that fabric, to the best of your recollection, was made at the factory of Thomas Dolan & Co.?

(Objected to as immaterial.)

A. Yes.

Q. 24. And, I understand you, when that young man whom you understood was a partner of Mr. Jennings showed you the fabric such as "Exhibit Dolan No. 3" you immediately recognized it and informed him, as already stated by you, that the fabric had been manufactured at Thomas Dolan's factory before you left there?

(Objected to as leading and immaterial.)

A. Yes.

Cross-examination by Mr. BETTS:

Cross-Q. 25. Who worked on the third loom from you at Mr. Dolan's?

A. Cornelius Jackson.

Cross-Q. 26. Who worked on the loom next to you?

A. That I do not remember.

Cross-Q. 27. Who worked on the second loom from you?

A. I do not remember.

Cross-Q. 28. Who worked on the fourth loom from you?

A. It is not for me to say who was there at that time.

Cross-Q. 29. You do not remember, do you?

A. No, sir.

Cross-Q. 30. How do you happen to remember that Jackson worked on the third loom from you?

338 A. I remember he was working it.

Cross-Q. 31. You do not remember who worked on any of the other looms near you, do you?

A. No; I do not remember the others.

Cross-Q. 32. Did you see every piece of work Jackson did while you were there?

A. I saw that (pointing to "Exhibit Dolan No. 3").

Cross-Q. 33. Last question repeated.

A. I cannot say that I saw every piece.

Cross-Q. 34. Did you see the work that the man did on the loom next to you?

A. I saw the work, but I cannot now tell what it was.

Cross-Q. 35. Can you say what the work was on the second loom from you while you were at Dolan's?

A. I think they were on stockings at that time.

Cross-Q. 36. Can you point out any other piece of work besides that "Exhibit Dolan No. 3" in that book that you can swear was done by Jackson?

A. I do not know that I have anything to do with that book.

Defendant's counsel requests that witness examine the same in the book referred to and say if he can answer the question.

A. I know these patterns, but cannot say just when or by whom they were made, as it was 12 or 13 years ago when I was at Dolan's.

Cross-Q. 37. Then you cannot say what was done by Mr. Jackson 12 or 13 years ago in the way of making articles on his loom, can you?

A. Only that I can say that he made this (pointing to "Exhibit Dolan No. 3").

Cross-Q. 38. That is the only one you remember?

A. That is one that I remember.

Cross-Q. 39. Did Jackson make much of the fabric like "Exhibit Dolan No. 3?"

A. I do not know how much he made.

Cross-Q. 40. Can you say whether he made much or little?

A. I cannot.

Cross-Q. 41. Can you say whether any other man besides Jackson made fabric like "Exhibit Dolan No. 3?"

339 A. Not that I know of.

Cross-Q. 42. You never knew of any man except Jackson making that fabric at Dolan's?

A. I do not.

Cross-Q. 43. And you never made any of it yourself?

A. No, sir.

Cross-Q. 44. And you do not know how much Jackson made?

A. No, sir.

Cross-Q. 45. Do you know, of your own knowledge, who designed that fabric?

A. Mr. Boot designed it.

Cross-Q. 46. How do you know?

A. He got up all the patterns and put the looms at work on them.

Cross-Q. 47. That is the only way you know; you never saw him designing it, did you?

A. That is the only way I know.

Cross-Q. 48. So you think he did it because there was no one else to do it?

A. Because there was no one else to do it.

Cross-Q. 49. That is all you know about it?

A. Yes.

Cross-Q. 50. What do you mean when you speak of fabric such as "Exhibit Dolan No. 3" being made at Dolan's?

A. I mean that was made there (pointing to "Exhibit Dolan No. 3").

Cross-Q. 51. You never saw any of that fabric after leaving Dolan's until you were called on by Mr. Bennett, here present, to make the affidavit of December 11, 1881?

By Mr. BENNETT: (Objected to as attempting to mislead the witness, as he has already testified that he was shown a specimen of that fabric prior thereto by certain parties representing the complainant.)

A. Not until the gentleman who said he was from New York or Brooklyn called on me, as I have told you.

Cross-Q. 52. How long was that before making the affidavit?

A. It might have been a few weeks.

Cross-Q. 53. Then from December, 1872, when you left
340 Dolan's, until December 11, 1881, when you made your affidavit, you never saw a piece of fabric like "Exhibit Dolan No. 3," did you?

By Mr. BENNETT: (Same objection.)

A. I saw the piece that the young man had that called on me, but not until then; that was in warm weather—in the fall.

Cross-Q. 54. Then for nearly ten years after leaving Dolan's you did not see a fabric like "Exhibit Dolan No. 3," did you?

A. No, sir; not until the gentleman who said he was from Mr. Jennings called on me.

Cross-Q. 55. Never had it called to your attention?

A. No, sir.

Cross-Q. 56. Were not the warp looms at Dolan's while you were there after 1868 all in one room?

A. Yes.

Cross-Q. 57. Cannot you give me the name of any man except Jackson who worked on these warp looms from 1868 to 1872?

A. Yes; William McDevitt, Edward McDevitt, John McDevitt, William McCabe, and others whose names I do not now remember.

Cross-Q. 58. Cannot you give me the names of any more?

A. Yes; Joe Core. I forget the others.

Cross-Q. 59. Who made the other samples on the same page with the "Exhibit Dolan No. 3," in the book marked "Samples to 1869?"

A. I cannot say.

Cross-Q. 60. You cannot tell me who made a single one of these other samples?

A. No, sir.

Cross-Q. 61. Can you give the name of anybody who made a single sample in that book save "Exhibit Dolan No. 3?"

A. I have nothing to do with that book.

Cross-Q. 62. What do you mean by saying that you have nothing to do with that book?

A. I think I have no occasion to give an answer to that; it is that that I have come about.

Cross-Q. 63. You have come particularly about that sample, "Exhibit Dolan No. 3," have you?

341 A. Yes; I know it was made there.

Cross-Q. 64. Can you tell me the name of any man who made any other pattern in that book except "Exhibit Dolan No. 3?"

A. No, sir. I cannot remember those things; it was so long ago.

Cross-Q. 65. You don't remember anything about it, do you?

A. Yes. I remember some of those patterns being made there.

Cross-Q. 66. You do not remember that "Exhibit Dolan No. 3" very distinctly, do you?

A. Yes; I remember that.

Cross-Q. 67. But not a single other one, do you?

By Mr. BENNETT: (Objected to, as the witness has said that he remembers other patterns.)

By Mr. BETTS: (The objection is objected to as tending to mislead the witness.)

Cross-Q. 68. Look at the pattern marked with the initials "H. A. T." and the No. "28" in the book "Samples to 1869" and state if you can give the name of the man who made it.

A. I can't tell who made that.

Cross-Q. 69. Did Jackson make that?

A. I can't say.

Cross-Q. 70. No. 28 is the same as "Exhibit No. 3," is it not?

A. That is purl work, same as the other. No. 28 is purl work and No. 31 is purl work.

Cross-Q. 71. And the sample No. 30, with the initials "H. A. T.," in the same book, is the same kind of work as "Exhibit Dolan No. 3," is it not?

A. I can say it is all purl work; that is all I can say.

Cross-Q. 72. It is the same kind as the other sample, Dolan No. 3, is it not?

By Mr. BENNETT: (Objected to as indefinite and tending to mislead the witness; besides, he has already testified that it was all purl work.)

342 A. It is all purl work.

Cross-Q. 73. Can you tell me who made sample No. 30?

A. No, sir.

Cross-Q. 74. Did Jackson make it?

A. I cannot tell you, sir; it is so long ago.

Cross-Q. 75. It is too long ago to remember, is it?

A. It is too long ago to remember who worked the looms. I can remember some of the patterns, but I cannot remember who worked the looms.

Cross-Q. 76. Do you remember the patents Nos. 28 and 30 being made at Dolan's while you worked there?

A. I don't remember those two particularly.

Cross-Q. 77. Do you swear that you never saw those two samples at Dolan's?

A. I cannot say that I saw them there. It is purl work such as they made, as well as the other.

Cross-Q. 78. You never made any yourself like Nos. 28 and 30, did you?

A. No, sir.

Cross-Q. 79. Did you ever see anybody else make it there?

A. I never saw it made anywhere else.

Cross-Q. 80. But you saw it made at Dolan's, did you?

A. I saw No. 3 made there, and No. 28 and 30 is purl work, same as the other.

Cross-Q. 81. You consider Nos. 28 and 30 and Exhibit No. 3 as the same, don't you?

By Mr. BENNETT: (Objected to as misleading and indefinite; besides, the witness has repeatedly answered the question to the effect that he considers it all purl work.)

By Mr. BETTS: (The attention of the court is especially called to this objection as an unwarranted interference with the cross-examination of the witness.)

A. It is all purl work; that is all I can say.

Cross-Q. 82. That is all you remember about it, is it not?

A. That is all.

Cross-Q. 83. What do you mean by "purl work?"

A. That is the purl, the edge there.

343 Cross-Q. 84. You do not know what became of any of these fabrics after they were taken off the loom, do you?

A. Only that they were taken to the wareroom and cut up.

Cross-Q. 85. Do you not know what became of them?

A. No, sir.

Redirect examination:

Redirect Q. 86. Do you recognize any other samples on the page containing "Exhibit Dolan No. 3" as having been made at Dolan's before you left there?

A. I have seen those patterns made there (pointing to the two at the top of the page marked "A" and "B"). I seen plenty of them.

Redirect Q. 87. Turn to other pages in the same book and see if there are any others that you recognize as having been made at Dolan's before you left there.

A. I saw plenty of these patterns made (pointing), and I myself made some of that (pointing to sample which is now marked in pencil "Beck No. 1," page "X").

Redirect Q. 88. You made some that is marked "Beck No. 1" while you worked for Dolan & Co.?

A. Yes; years before I left. This sample is the same as the one you marked "Beck No. 1." (The last sample referred to is marked in pencil "Beck No. 2, page —.") I do not know anything about the others.

Recross-examination:

Recross-Q. 89. You cannot point out a single sample in the book "Samples to 1869" which you can swear was made by somebody else while you were at Dolan's except that "Exhibit No. 3," can you?

A. I can remember that very well, and also the samples I have pointed out that I made myself. Of course, I remember some of the other patterns, but I do not remember who worked them on the loom.

Recross-Q. 90. For how long a time was Jackson working on the pattern No. 3?

A. I do not know how long he worked on it.

Recross-Q. 91. Cannot you give me some idea how long he worked on it?

344 A. I do not know how long he worked on it.

Recross-Q. 92. Have you had any conversation with Jackson about that sample?

A. When?

Recross-Q. 93. Since 1880.

A. I did; about the time Mr. Jennings' man came to me about that. That is all.

Re-redirect examination:

Re-redirect Q. 94. Have you had any conversation with Cornelius Jackson in reference to the sample "Exhibit Dolan No. 3," except shortly after the party was over from New York in the interest of Mr. Jennings to see you about it?

A. That was the only time.

EDWARD MCDEVITT, a witness called on behalf of defendant, being first duly sworn, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

By Mr. BETTS: So much of the testimony of this witness as may be adduced to show prior knowledge and use of the patented improvement in controversy objected to on the ground that the name of this witness has not been set up in the answer, as required by the statute.

By Mr. BENNETT: This witness is called in corroboration of the facts testified to by the witness cited to in the answer.

A. Edward McDevitt; age, 45; residence, 242 Oxford street, Philadelphia; occupation, a warper.

Q. 2. Do you know Thomas Dolan, the defendant, and have you ever worked for him?

A. Yes; about 18 years.

Q. 3. In what capacity were you employed by Thomas Dolan prior to 1873?

A. I was in the warp-frame shop.

Q. 4. Operating a warp loom?

A. Yes.

Q. 5. Who was the foreman of the warp-loom department?

A. Henry Boot.

Q. 6. And you operated a warp loom in his department?

A. Yes.

345 Q. 7. Examine fabric "No. 3" and state whether or not you ever saw such fabric manufactured at the factory of Thomas Dolan & Co.; and, if so, when?

A. I saw that work made there about 1868.

Q. 8. Did you examine it while it was being worked on the loom?

A. I worked the loom right opposite, on the other side of the room. I worked on the north side and the loom that No. 3 was made on was on the south side.

Q. 9. Do you know how long fabrics such as "Exhibit Dolan No. 3" was made at Dolan's?

A. No, sir. I could not tell exactly.

Q. 10. Do you know in what quantities it was made?

A. Could not tell that. Henry Boot made the samples and they were brought out and put into the big loom.

Q. 11. Did Mr. Boot put the fabric "Exhibit Dolan No. 3" on the loom?

(Objected to as leading.)

A. Yes. He always started the looms and attended to putting the cords on.

Q. 12. Can you name any one you saw operating a loom upon which fabric such as "Exhibit Dolan No. 3" was being made?

A. Only Cornelieus Jackson.

Q. 13. How long did you continue to operate a warp loom in Mr. Boot's department?

A. I was there about 7 years.

Q. 14. Give me the year you stopped work in Boot's department on the warp loom?

A. I guess it was about 1874; somewhere along there.

Q. 15. Did you cease operating a warp loom while Mr. Boot was in the employ of Mr. Dolan?

A. Boot got his leg broke once and he was out, and the work got slack and girls were put on these warp looms, and they sent me up stairs to warping.

Q. 16. Then you stopped operating a warp loom at the time Mr. Dolan made a change from men to girl operators of his warp looms?

A. Yes.

346 Q. 17. Can you swear positively that prior to that time you saw made at Dolan's factory fabric the same as "Exhibit Dolan No. 3?"

(Objected to as leading.)

A. Yes.

Q. 18. That is a fabric composed of a double pillar with side projecting loops and the pillars joined together, forming meshes?

(Objected to as very leading.)

A. Yes.

Q. 19. And this you were positive was prior to changing the men operators for girls on the warp looms?

(Same objection.)

A. Yes.

Cross-examination:

Cross-Q. 20. In what year were girls substituted for men as operators of the warp looms?

A. Can't remember.

Cross-Q. 21. You don't remember the year at all?

A. No; unless I was to think about it.

Cross-Q. 22. Can you tell me now what year it was?

A. No, sir.

Cross-Q. 23. When did you first go to "Dolan's?"

A. About the close of the war. I remember I came back and met Mr. Dolan on the street one day. He asked me if I was discharged and I told him yes. He then told me to go into the mill and go to work, and I don't think I had the soldier's clothes off when I met Mr. Dolan. It must have been in 1865.

Cross-Q. 24. And how soon after you went to Dolan's did you see fabric like this you have described and testified to?

A. Three or four years; about 1868.

Cross-Q. 25. Give me the names of all the men you saw working on any such fabric

347 A. Cornelius Jackson is about the only one that I remember.

Cross-Q. 26. How did you know that Mr. Boot designed that fabric?

A. He designed everything that was designed there.

Cross-Q. 27. You do not know of your own knowledge that he designed this fabric, except from the fact that he was designing things all the time?

A. He had work that was made there and I could walk across the room and look at it,

Cross-Q. 28. You never worked this fabric yourself, did you?

A. Not that I remember.

Cross-Q. 29. Will you swear that you never saw fabric like that (pointing to No. 3) which Jackson worked?

A. No; I will not swear I did.

Cross-Q. 30. How do you know it was that fabric Jackson worked on?

A. By seeing it and knowing the pattern.

Cross-Q. 31. Didn't Jackson work on a great many different fabrics while you were there?

A. He worked on stockings and such things as that.

Cross-Q. 32. Do you mean to say that you remember every different fabric Jackson worked on while you were there?

A. No; I could not swear to all that.

Cross-Q. 33. Didn't you work on a great variety of fabrics yourself?

A. Not so great a variety. Part of the time I worked on hosiery in diamond stockings and some of the time on this (pointing to two "Samples above Dolan No. 3").

Cross-Q. 34. How many men were there in the warp room?

A. Sixteen or seventeen, I think. There were seventeen looms.

Cross-Q. 35. And could you see all the designs being made?

A. Yes; by simply walking around the room.

Cross-Q. 36. Do you pretend to say you remember all the designs being made while you were there?

A. No; not at all.

Cross-Q. 37. When was the sample fabric "Exhibit Dolan No. 3" called to your attention?

A. About the time this suit commenced.

348 Cross-Q. 38. At the time you made an affidavit in this case?

A. Yes.

Cross-Q. 39. You made the affidavit sworn to December 14, 1881, in this case, didn't you?

A. Yes.

Cross-Q. 40. Whereabouts were you when you made this affidavit?

A. In the office at the mill.

Cross-Q. 41. Was the fabric "Exhibit Dolan No. 3" shown to you at the time?

A. Yes.

Cross-Q. 42. And what was said about it?

A. I was asked if I knew it or ever saw it made and I said yes, same as I am doing now.

Cross-Q. 43. Have you examined any of the samples in the book "Samples to 1869," except samples on those pages now open before you?

A. I think there is one I looked at.

Cross-Q. 44. Which one?

(Objected to as immaterial.)

A. This one (pointing to No. 28).

Cross-Q. 45. At whose request did you look at that sample?

A. I was shown it by Mr. Bennett.

Cross-Q. 46. What was said about it?

A. Nothing, only he asked me if ever I saw it made.

Cross-Q. 47. Had you ever seen it made?

A. Yes.

By Mr. BENNETT: (All this line of cross-examination objected to for the reasons specified during the examination of the other witnesses.)

Cross-Q. 48. When did you see it made?

A. I think they were both made about the same time. They are nearly the same thing, only one is heavier than the other and with the double pillar.

Cross-Q. 49. One and the same thing, only one is heavier yarn than the other?

349 A. Yes; heavier yarn and the double pillar. One is called the single pillar and the other is called the double pillar.

Cross-Q. 50. Have you had any conversation to-day in regard to one being a single pillar and the other being a double pillar with anybody?

A. Yes; in conversation here I heard them talking about it.

Cross-Q. 51. Heard who talking about it?

A. Heard different parties out in the other room.

Cross-Q. 52. That called it to your attention, did it?

A. That called it to my attention, but No. 30, I very distinctly remember that.

Cross-Q. 53. Who made the fabric like No. 28 at the time you were at Dolan's?

A. I don't remember.

Cross-Q. 54. Did Jackson make it?

A. I didn't remember whether he did or not.

Cross-Q. 55. Did you ever see that fabric made of heavier yarn?

A. All that I remember made of heavier yarn was of the double pillar.

Cross-Q. 56. How long was the fabric like "Exhibit Dolan No. 3" on Jackson's loom?

A. About two weeks, as near as I can remember. It was a long time ago.

Cross-Q. 57. How often did you see it on the loom—more than once?

A. Oh, yes; more than once. If there was any trouble with a pattern on any loom we would notice it more. There was a great deal of trouble with this. When they come to take it off the roller it would stick.

Cross-Q. 58. There was a great deal of trouble of making that fabric, was there?

A. Some trouble in getting it off the rollers. It would stick.

Cross-Q. 59. It was a very slow fabric, was it?

A. I don't know about its being slow. I don't remember what quantity of that work there was turned out.

Cross-Q. 60. Mr. Boot had a great deal of trouble with the fabric, didn't he?

A. Getting it to work right.

Cross-Q. 61. And it required a greal of experimenting before he got it to working at all, didn't it?

350 A. Yes; some before he got it to work right.

Cross-Q. 62. Do you remember anything about Mr. Dolan's ordering it off the loom because it wouldn't work?

A. No, sir.

Cross-Q. 63. It was taken off the loom after working it a short time, as you remember?

A. I cannot say; it was on the loom a week and more, to the best of my remembrance.

Cross-Q. 64. And you saw it during that week?

A. I worked right opposite to the loom it was made on.

Cross-Q. 65. How far away were you—how many feet?

A. There was about ten feet between the looms—no; not that much; about six feet.

Cross-Q. 66. And after it was taken off you never saw it again until lately, just before the suit was begun, did you?

A. No, sir; we were mostly on stockings after that.

Cross-Q. 67. You never saw it working in a warp loom after it was taken off until a short time before you made this affidavit, did you?

A. I do not remember that I did.

Cross-Q. 68. Do you know what those fabrics are made for?

A. No, sir; I could not tell. They all went into the wareroom.

Cross-Q. 69. You do not know whether or not they were sold, of your own knowledge?

A. No, sir.

Cross-Q. 70. You do not know to whom they went?

A. No; I don't know what they did with them in the wareroom.

Cross-Q. 71. Do you remember in how wide strips these fabrics were made?

—. ——.

Cross-Q. 72. You can't say how wide the strips were?

A. No, sir.

Cross-Q. 73. How long were the strips?

A. They can make them in any length.

Cross-Q. 74. How long were they made, in fact?

A. I could not tell you. They could make them any length.

Cross-Q. 75. Could these fabrics be made on a double-ribbed machine?

351 A. Anything that could be made on a warp loom could be made on a double-ribbed machine, but not so well.

Cross-Q. 76. Could fabric like Nos. 28 and 30 or "Exhibit Dolan No. 3" all be made on the same machine?

A. Yes; they could.

Cross-Q. 77. Without altering the machine?

A. Oh, there might be some alterations.

Cross-Q. 78. You don't know whether there would be or not?

A. I know there would be alterations; some would have to have different number of needles.

Cross-Q. 79. The same man who is experienced enough to make one could make the other, couldn't he?

A. Yes.

Cross-Q. 80. Do you remember where George McDevitt's warp loom stood?

A. Yes; right in front of the loom that that stuff was made on (pointing to Exhibit Dolan No. 3).

Cross-Q. 81. What did he work on?

A. He worked on different things—on "diamond stockings," and sometimes trimmings.

Cross-Q. 82. Are you still working for Mr. Dolan?

A. Yes.

Cross-Q. 83. Have you ever had any conversation with Mr. Jackson about making fabric like "Exhibit Dolan No. 3?"

A. No, sir; only as we would be all together and talking about such matters generally. He never told me anything about it. I haven't seen him for some time now.

Cross-Q. 84. How long has he been working for Mr. Dolan?

A. About three or four months, I think.

Cross-Q. 85. How long has it been since he left Dolan's?

A. Two or three months, I think.

Cross-Q. 86. Do you remember the name by which they called these fabrics like Nos. 28 and 30 at Dolan's?

A. No, sir; I do not.

Cross-Q. 87. Did they call them "seaweed?"

A. All I ever heard them called was "purling trimming."

Cross-Q. 88. This was what you called "purl" fabric, was it?

A. Yes.

Cross-Q. 89. And No. 3 is also?

A. Yes; that is what I would call it.

Cross-Q. 90. Then you give all those three the same name?

352 A. Yes.

Cross-Q. 91. Can you produce any fabric like Exhibit Dolan No. 3 which you can swear was made at Dolan's before the year 1870?

A. No, sir.

Cross-Q. 92. Can you tell me of any one in whose possession there is a piece of such fabric?

A. No, sir.

Cross-Q. 93. Have you any written memorandum of any kind that would prove the manufacture of fabric like "Exhibit Dolan No. 3" at Dolan's prior to 1870?

A. No written memorandum at all.

Cross-Q. 94. Have you nothing on which to rely in regard to the time that fabric was made at Dolan's except your memory?

A. No, sir.

Cross-Q. 95. It is simply, then, your recollection what you saw there?

A. By seeing it made and seeing it on the loom.

Cross-Q. 96. And it was only one of a great many patterns that you saw while you were there before 1870, was it not?

A. Yes; it is one among the rest.

Adjourned to meet at 237 Broadway, New York, at 11 a. m. February 20, 1882.

Subscribed and sworn to before me this — day of ——, A. D. 1883.

—— ——.

GEORGE MCDEVITT, being duly sworn, testified as follows:

By Mr. BENNETT:

Q. 1. What is your name, age, residence, and occupation?

By Mr. BETTS: So much of the testimony of this witness as may be directed to show prior knowledge and use of the patented

353 improvement in controversy objected to that the name of this witness has not been set up in the answer as required by the statute.

By Mr. BENNETT: This witness is called simply to corroborate the testimony given by those witnesses whose names are cited in the answer.

A. George McDevitt; age, 42; residence, Philadelphia; occupation, flour and feed dealer, and has been since leaving Mr. Dolan's employ.

Q. 2. Do you know Mr. Dolan, the defendant in one of these cases?

A. I do.

Q. 3. Have you ever been in the employ of Thomas Dolan or the firm of which he is senior member?

A. I was, I think, for 7 or 8 years.

Q. 4. When did you leave Mr. Dolan's employ?

A. About September 1, 1868.

Q. 5. How were you employed while with Dolan?

A. Sometimes piece work; sometimes day work.

Q. 6. Your trade is that of a knitter or weaver?

A. Yes; I was born and raised as such.

Q. 7. Have you worked for Mr. Dolan at his factory since leaving there, in September, 1868?

A. No, sir.

Q. 8. Examine fabric in book "Samples to 1869, Thomas Dolan," and marked "Exhibit Dolan No. 3," and state if you have ever seen fabric of that construction before; and, if so, when first, and where.

A. I saw that fabric made at Dolan's mill previous to leaving there. I do not know the year, but it was made previous to 1868, as was also the majority of the patterns laying before me here on the same page with "No. 3."

Q. 9. Then fabric of the same construction as "Exhibit Dolan No. 3" and also the several other patterns on the same page were made at Dolan's factory before you left there, in September, 1868?

A. Yes.

Q. 10. Do you know who wove that fabric, "Exhibit Dolan No. 3?"

A. I could not say, but I think it was Henry Boot.

354 Q. 11. In what capacity was Mr. Boot employed at Dolan's at that time?

A. He was foreman, and was supposed to make all the patterns that went on the looms.

Q. 12. And saw that they were properly placed upon the looms?

A. That was his duty as overseer.

Q. 13. Has your experience as a knitter and operator of a loom been such as to enable you to say whether two fabrics are or not of the same construction?

A. I think I have knowledge enough of that kind of work to distinguish one work from another and how it is made.

Q. 14. State whether or not Mr. Boot was still in the employ of Mr. Dolan when you left.

A. Yes; I gave him notice of my quitting, and he took it in the office for me.

Cross-examination by Mr. BETTS:

Cross-Q. 15. What was the exact date when you left Dolan's?

A. I think about September, 1868.

Cross-Q. 16. How long before that was it that you saw fabric like "Exhibit Dolan No. 3" made there?

A. It might have been in 1865 or 1866, but I could not be positive. I can only say that it was made there before I left.

Cross-Q. 17. Your best recollection is that it was made in 1865 or 1866?

A. I would not be positive as to that, but I know it was made before I left, in 1868.

Cross-Q. 18. Just after the close of the war?

A. I would not be positive.

Cross-Q. 19. You cannot tell the exact year?

A. Could not tell the exact date, because there are a great many of the patterns in the book (Samples to 1869) that I made myself. Some of them were actually never used in the place.

Cross-Q. 20. There are a number of patterns in that book, "Samples to 1869," then, that were made, but never used?

A. Never used—patterns right on that leaf there (pointing).

Cross-Q. 21. Patterns on the same leaf with "Exhibit Dolan No. 3" that were never used?

A. Never used to any extent in the mill. There were a
355 few short warps made out of them, but they were never used to any extent.

Cross-Q. 22. Was it three years before you left that the fabric "Exhibit Dolan No. 3" was made? Try and fix the date.

A. I could not attempt to fix the date now. All I could be positive about is that it was made before I left, in 1868.

Cross-Q. 23. Did you make it yourself?

A. No, sir; it was made right back of me. The reason I remember it is that the men had a good deal of trouble to get it off the warps, as it would stick together on account of that "in-lay" in it.

Cross-Q. 24. It was a slow-working pattern, was it not?

A. Yes; very slow.

Cross-Q. 25. And the men that worked it had a great deal of trouble with it?

A. Yes; in getting it off the warps. It rolled up together—it stuck.

Cross-Q. 26. You do not know of your own knowledge that Henry Boot designed that "No. 3," do you?

A. I do not know, but I always supposed it to be his pattern. It was made while he was there.

Cross-Q. 27. You simply supposed it was his pattern because it was made while he was there?

A. Yes.

Cross-Q. 28. You did not see him make it?

A. No. Boot had a private place, and he would get up the designs and then bring it out and put it on a loom. This No. 3 was put on a loom next to me.

Cross-Q. 29. None of the men could say what was made in Boot's private office?

A. No one was allowed to go in.

Cross-Q. 30. That was where his sample loom was?

A. Yes.

Cross-Q. 31. And he used that loom in experimenting to see how samples looked, did he?

A. I always supposed that was what he was there for.

Cross-Q. 32. Did you ever see fabric like "Dolan No. 3" on the sample loom?

A. I do not remember seeing it on any other than the loom it was made on—right next to me.

356 Cross-Q. 33. Whose loom was right next to you?

A. It has been so long ago I do not remember.

Cross-Q. 34. If a fabric did not work well it was thrown aside and not used, you say?

(Objected to.)

A. Yes; a sample kept of it, I suppose.

Cross-Q. 35. In case they wanted to use it as a reference?

(Objected to.)

A. So they would know how to make it afterwards.

Cross-Q. 36. Where would the goods go to from the weaving-room?

A. Into the ware-room.

Cross-Q. 37. You never saw them after they were taken off the looms, did you?

A. Occasionally we might go and look at some goods there.

Cross-Q. 38. Just occasionally?

A. Yes; if we were disposed to look at it we could do so.

Cross-Q. 39. Do you know Cornelius Jackson?

A. I have a slight acquaintance with him.

Cross-Q. 40. Did you know him at Dolan's when you were there?

A. Don't remember that I did.

Cross-Q. 41. You can't say positively?

A. Very many worked there while I was there that I did not know.

Cross-Q. 42. Did Jackson work in the weaving-room?

A. He worked in the fancy-hosiery department.

Cross-Q. 43. Do you know where his loom was?

A. I do not, sir.

Cross-Q. 44. He did not work next to you, did he?

A. Not that I remember. I cannot tell the man that worked next to me, as they were frequently changed.

Cross-Q. 45. You cannot tell me the name of the man that had that fabric on his loom?

A. No, sir.

Cross-Q. 46. Do you know of any way that I could find out?

A. I do not. I could not tell the man who worked it now.

357 Cross-Q. 47. Have you examined any of the samples on that book, "Samples to 1869," except those on the two pages now open before you?

A. That is all.

Cross-Q. 48. You have not examined any others?

A. No, sir; but I suppose there are a good many patterns in there that I did myself.

Cross-Q. 49. Please look at patterns marked with the initials "H. A. T." and the numbers "28 and 30," in that book, and state if you recognize them.

(Objected to as improper cross-examination, not warranted by any

facts brought out in the direct examination, and therefore incompetent and immaterial.)

A. I recognize Nos. 28 and 30.

Cross-Q. 50. You saw them making it at Dolan's before you left there, did you?

A. Yes.

Cross-Q. 51. Do you remember what they called these two styles?

A. I do not; we used to call like 28 an "inlay," but they call it a "single pillar" now, I believe.

Cross-Q. 52. Did you make either of these, 28 and 30, yourself?

A. I do not remember, but I might have done so.

Cross-Q. 53. You saw them made, did you not?

A. Yes; they were made in the mill.

Cross-Q. 54. How long before you left Dolan's were Nos. 28 and 30 made?

A. I cannot recollect.

Cross-Q. 55. Did Henry Boot design them?

A. That I cannot tell; but I suppose he did.

Cross-Q. 56. Do you know whether they were used in any quantity?

A. I don't think they were made in large quantities.

Cross-Q. 57. Do you remember the man next to you working on fabric like "28 and 30?"

A. I don't remember it; no.

Cross-Q. 58. You just remember seeing it made?

A. I just remember seeing the material there.

358 Cross-Q. 59. In what sized strips was it made?

A. They were cut in strips four or five inches wide, used, I think, for trimming.

Cross-Q. 60. Do you remember it being made out of heavier yarn?

A. They tried it on two or three different kinds of yarn, I think.

Cross-Q. 61. Some of the heavier yarn was used for Nos. "28 and 30?"

A. Some coarser, some lighter, I think.

Cross-Q. 62. And the fabric made from the heavier yarn was used for trimming, was it?

A. I supposed that was what they used it for, but I am not certain. I could not tell anything about what it was used for.

Cross-Q. 63. Were the warp looms all in one room at Dolan's between 1865 and 1868?

A. In 1868 the looms were all in one room; the double-rib machines were moved previous to that, and made two separate rooms.

Cross-Q. 64. Could these fabrics, like "28 and 30" in that book, have been made on a double-ribbed machine?

A. I think they might be, possibly.

Cross-Q. 65. That is, you never made them so, but think all three could be made on a double-rib machine?

A. A double-rib machine would very nearly make anything that a warp loom will, except not quite as perfect.

Cross-Q. 66. Then any of these fabrics could be made on a double-rib machine?

A. Some could be made on a weaving loom, but the majority were made on a knitting machine.

Cross-Q. 67. I mean the three fabrics, No. 3 and Nos. 28 and 30. Could not any of these be made on a double-rib?

A. I think they could; yes. No reason why it is impossible, although I think a warp loom would make them the best.

Cross-Q. 68. You do not remember how much of a fabric like No. 3 was made, do you?

A. No, sir.

Cross-Q. 69. Do not remember for what length of time it was made, do you?

A. No, sir; too far back.

359 Cross-Q. 70. You never saw Jackson make any of that fabric on his loom, did you?

A. No, sir; not that I remember.

Cross-Q. 71. Never saw anybody else you can name make it?

A. I saw it made, but can't name the man.

Cross-72. Did you make an affidavit on the injunction motion in this case which was sworn to December 14, 1881?

A. Yes.

Cross-Q. 73. Can you tell me what width the fabric like "No. 3" was made in?

A. I cannot, at present.

Cross-Q. 74. You have pretty much forgotten about these fabrics, have you not, except as they are called to your mind?

A. I recognize anything that I ever made, and I can say positively that these patterns were all made previously to my quitting Dolan's.

Cross-Q. 75. You do not pretend to recall everything that everybody else made there, do you?

A. No; not everything.

Cross-Q. 76. Can you give me the names of any man that worked a loom while you were there?

A. Mr. Beck, Mr. Hanover, Mr. Caves, who is dead now; Wm. Cotten, Wm. McDevitt, Edward McDevitt. There were fifteen or twenty of us in the room.

Cross-Q. 77. Can you produce any piece of fabric like "Exhibit Dolan No. 3" which you can swear was made at Dolan's before you left there?

A. No; I cannot at present. I used to keep samples of the different kinds of work I made, but I do not know where they are now.

Cross-Q. 78. Can't tell me where I can find a piece of such fabric, can you?

A. No, sir.

Cross-Q. 79. And you never saw a piece of fabric such as "Exhibit Dolan No. 3" after leaving Dolan's until the matter was called to your attention when you made the affidavit sworn to December 14, 1881, did you?

A. Not that I remember.

360 Redirect examination by Mr. BENNETT:

Redirect Q. 80. What was done with the fabrics that were manufactured upon the warp looms after they were taken from the looms?

A. Part of the time we had to carry it to the ware-room ourselves, but after business increased a man was hired to carry it from the looms to the ware-room.

Redirect Q. 81. After it left the looms and went to the ware-room did you see it again?

A. Not on any particular occasion; we were not allowed to go from one room to another.

Redirect Q. 82. You did not know what became of the fabric and what was done with it after it was taken to the ware-room?

A. No, sir.

Redirect Q. 83. All fabrics that were made on the warp loom in any quantity were taken off the looms and carried to the ware-room?

A. Yes, always.

Redirect Q. 84. And your connection ceased when they were taken from the loom?

A. Yes.

Redirect Q. 85. What is your best recollection as to whether or not Cornelius Jackson worked at Thomas Dolan's during the time you were there?

A. I heard the man's name repeatedly while I was there in connection with the warping department.

Redirect Q. 86. Then you can't swear positively whether he did or did not work at Dolan's then?

A. I cannot swear positively.

Redirect Q. 87. You said that fabric such as "Exhibit Dolan No. 3" was manufactured on the loom directly back of you. Do you know on what loom fabrics "28 and 30" were made?

A. I could not be positive as to the number of the frames; it is only my recollection.

Redirect Q. 88. You have stated that fabrics such as "Exhibit Dolan No. 3" was manufactured on the loom directly back of you. State whether fabrics such as 28 or 30 was manufactured on the same or different looms.

361 A. I cannot say whether it was or not.

Redirect Q. 89. Do you know whether both constructions of fabrics Nos. 28 and 30 were being manufactured at the same time or at different times?

A. At different times, I think, and they were made of different yarns.

Redirect Q. 90. Have you examined samples 3 and 28 and 30 carefully enough to state whether they are of the same or of different construction?

A. They are the same pattern, but No. 3 is a double pillar.

Redirect Q. 91. State precisely what is the difference, if any, between the two.

A. I can see a difference in the quality of the yarn, and No. 3 is

a double pillar while the other two are single pillars; Nos. 28 and 30 is a single pillar made with one bar and No. 3 is a double pillar made with two bars; the difference in the inlays is the only difference that I can see.

Redirect Q. 92. And both the double inlay or double pillar and the single inlay or single pillar was manufactured at Dolan's before you left there in 1868?

(Objected to as leading.)

A. Yes.

Recross-examination:

Recross-Q. 93. The yarn of Exhibit No. 3 is heavier than that of No. 28, is it not?

A. No. 3 is a heavier yarn, I think.

Recross-Q. 94. How closely did you ever examine the fabrics that you say was made on the loom just behind you?

A. It was the loom in front, as near as anything could be; a new pattern, anything like that, we would examine, as, of course, we were all trying to gain knowledge, because it was our business and to our interest to do so.

Recross-Q. 95. Was the sample on the loom behind you made of heavy or light yarn?

A. If my memory serves me right, it was made of both. I
362 think there was a little warp of the light and a little warp of the heavy; there were other circumstances which convinced me that the double pillar was made, because Dolan came in there one day in a terrible rage and said it was too slow to work and he ordered it taken out of the loom.

Recross-Q. 96. He stopped the working of it on the loom, did he?

A. He said it was too slow and it would not do to keep the frame on it.

Recross-Q. 97. Did they take it off the looms then?

A. They did directly afterwards.

Recross-Q. 98. That is the last you saw of it, was it?

A. The last I saw of it while in his employ.

Recross-Q. 99. Your recollection is that the fabric looked like the samples 28 and 30, is it?

A. Yes; or No. 3.

Recross-Q. 100. You have no distinct recollection, have you, as to whether it was a single or a double pillar?

By Mr. BENNETT: (Objected to as already answered.)

A. I think I have answered that before; one was a double and one was a single pillar.

Recross-Q. 101. Was it made in that light fabric, with a double pillar?

A. I do not think it was; it was only made with a single pillar in the light material.

Subscribed and sworn to this —— —, 1883.

—— ——.

GEORGE MOUSLEY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

By Mr. BENNETT:

Q. 1. What is your name, age, residence, and occupation?

By Mr. BETTS: So much of the testimony of this witness as may be adduced to show prior knowledge and use of the patented
363 improvement in controversy objected to on the ground that the name of this witness has not been set up in the answer as required by the statute.

By Mr. BENNETT: This witness is called simply in corroboration of the facts testified to by the witnesses cited to in the answer.

A. George Mousley; age, forty-six; residence, 1549 North Fourth street, Philadelphia, and my business is that of a storekeeper.

Q. 2. Do you know Thomas Dolan, the defendant?

A. Yes.

Q. 3. Were you ever in the employ of Thomas Dolan or the firm of which he was senior member?

A. Yes.

Q. 4. When did you enter his employ and how long did you remain with him?

A. I entered his employ in the latter part of 1861 or 1862 and remained there about nine years.

Q. 5. When did you leave him?

A. In 1870, as near as I can remember.

Q. 6. In what capacity were you employed in Dolan's factory?

A. As journeyman for a few years and the last three years as foreman.

Q. 7. What is your trade?

A. Knitter.

Q. 8. And it is in that capacity that you were and have been employed by Dolan?

A. Yes.

Q. 9. How long did you continue to operate a knitting machine for Mr. Dolan?

A. The full time of my employment by him.

Q. 10. What kind of a machine did you operate and where was it located?

A. I operated the warp looms and rib machines, both—the warp looms for a couple of years. After that I took charge of the rib department—that is, when he first started the rib department;
364 when they were separated from the others. I took charge of them, placed them in position, set them to work, and superintended them.

Q. 11. When did you separate the rib machines from them and make a separate department of them?

A. In 1866, I believe.

Q. 12. And at that time you became foreman of the room in which the rib machines were located?

A. Yes.

Q. 13. Prior to this time you had been operating a machine in the warp-room?

A. Yes.

Q. 14. Did you remain foreman of the rib-machine department until you left there?

A. Until I quit.

Q. 15. Who was foreman of the warp-loom department?

A. Henry Boot.

Q. 16. After you became foreman of the rib-machine department were you in the habit of visiting the warp-loom department?

A. Yes; every day.

Q. 17. Did you also know the various styles of fabrics being manufactured on the warp looms in the warp-loom department?

A. Nearly every style that was made there.

Q. 18. Who was designer at that time for the warp-loom department?

A. Henry Boot.

Q. 19. State whether or not you and Mr. Boot were in the habit of consulting together as to the various styles to be produced and such matters.

A. Yes; occasionally we would consult each other as to the different style or pattern for a fabric.

Q. 20. Examine the book "Samples to 1869, Thomas Dolan," marked "Exhibit Dolan No. 3," and state if you understand its construction.

A. I have examined it and understand it perfectly.

Q. 21. When before this, if ever, did you see fabrics such as "Exhibit Dolan No. 3" and where?

A. In the warp-room at Dolan's factory, somewhere between 1866 and 1868. I cannot say the month, but I think that it was about 1868.

365 Q. 22. Was it before or after you became foreman of the rib-machine department?

A. After.

Q. 23. Did you ever see fabric of the construction of "Exhibit Dolan No. 3" manufactured at the factory of Thomas Dolan?

A. Yes.

Q. 24. Can you swear positively that fabrics of the same construction as "Exhibit Dolan No. 3" was manufactured before you left Dolan's in 1870?

A. Yes.

Q. 25. Upon what style of machine and in what room was it manufactured?

A. It was manufactured on a rotary warp loom in the warp-room.

Q. 26. Do you know who designed that fabric?

A. Henry Boot.

Q. 27. Did you ever see such construction of fabric while it was in the loom being woven?

A. Yes.

Q. 28. What called your attention especially to that fabric and

its construction. And state whether or not you ever had any conversation with Mr. Boot in reference to it.

A. Nothing more than he just asked me how I liked the style of the new fabric.

Q. 29. Since your leaving Dolan's employ, in 1870, have you worked at his factory in any capacity?

A. No, sir.

Q. 30. What quantity of fabrics such as "Exhibit Dolan No. 3" was manufactured at Thomas Dolan's factory while you were there?

A. I cannot tell the quantity, but it was on the looms some time.

Q. 31. Was it not manufactured in a considerable quantity?

(Objected to as leading.)

A. Can't tell how much was made.

Q. 32. State, as near as you can, how long that pattern and construction of fabric was on the loom.

A. Several weeks, as near as I can remember.

Q. 33. What was done with that fabric as well as the other
366 fabrics being made in warp-loom and rib-machine departments after it was taken from the looms?

A. Taken to the ware-room and there made into opera hoods, muffs, nubias, shawls, &c.

Q. 34. Do you mean that the fabrics "Exhibit Dolan No. 3" was made up into such articles?

A. "No. 3" was used more as a trimming than anything else.

Q. 35. Then the fabrics "Exhibit Dolan No. 3" was used as a trimming for the various articles named by you?

(Objected to as leading.)

A. Yes.

Q. 36. What was the width of the fabric "Exhibit No. 3" that was made at Dolan's factory while you were there?

A. It varied from 4 to 6 inches; 6 to 8 inches.

Q. 37. In what lengths was it made?

A. Could not tell exactly, but somewhere in the neighborhood of 250 feet warp.

Q 38. Would it be woven out into a continuous strip?

A. Yes, a continuous strip.

Q. 39. The rib department and the warp-loom department were in adjoining rooms with a connecting door between them, I understand?

A. They were.

Q. 40. Are you the George Mousley who gave an affidavit in this case on December 14, 1881?

A. Yes.

Q. 41. Prior to giving that affidavit state whether or not you were called by anybody in reference to fabrics such as "Exhibit Dolan No. 3;" and, if so, state fully what took place at that time.

(Objected to as immaterial.)

A. I was called upon by a young man who asked me if I under-

stood the fabric. I told him I did. He asked me if I ever saw it made. I told him I did. He asked me where, and I told
367 him at Thomas Dolan's factory. What this young man's name is I don't know. He stopped at my place of business and told me he was from New York.

Q. 42. Did you tell him *when* that fabric was made at of Dolan's?

A. I did not.

Q. 43. Did he ask you if it was made there while you were working for Dolan?

A. I do not remember.

Q. 44. He showed you a piece of fabric of the construction "Exhibit Dolan No. 3?"

(Objected to as leading.)

A. He did.

Q. 45. And was it to that piece of fabric that his questions to you were directed?

(Same objection.)

A. Yes.

Q. 46. State whether or not while you were employed by Thomas Dolan it was the practice when a certain pattern was placed upon a full-sized loom to manufacture it in considerable quantities.

(Objected to as immaterial.)

A. It was.

Q. 47. And if a fabric had been designed and was not approved by Mr. Dolan would it be placed upon a large-sized loom?

A. No, sir.

Q. 48. And the fact that it was placed upon a large-sized loom indicated that it had been approved by Mr. Dolan and was manufactured to a considerable extent?

(Objected to as immaterial.)

A. Most assuredly.

Q. 49. Was that a general rule?

A. It was a general rule to make a sample before placing it upon a large loom.

368 Q. 50. And if that sample was not approved not to put the fabric on the large loom?

A. Yes; not to make the fabric.

Q. 51. Then only approved patterns were put upon a large-sized loom?

(Objected to as leading.)

A. Yes.

Cross-examination:

Cross-Q. 52. Have you seen any of the samples in that book, "Samples to 1869, Thomas Dolan," except those that are on the two pages now laying open before you?

A. Yes.

Cross-Q. 53. When?

A. When I was at the mill and since.

Cross-Q. 54. When last did you see any except those which you now see on those two pages before you?

A. The last time was, I think, during the last examination, in 1881.

Cross-Q. 55. When last did you see any except those you now see on those two pages—any of the others?

A. I have seen most of them to-day.

Cross-Q. 56. You were looking through the whole book to-day, were you?

A. Yes; I have been looking back to see if any of my designs are there?

Cross-Q. 57. You did not design that fabric, "Exhibit Dolan No. 3," did you?

A. Not this we have reference to.

Cross-Q. 58. How do you know that Boot designed it?

A. By seeing it on his loom. He generally got up the design.

Cross-Q. 59. Can you give me the names of any of the men who run the looms at Dolan's?

A. I could not, because there were so many looms in the room and the men were changed so often.

Cross-Q. 60. Then you cannot give me the name of any man who worked on that pattern?

A. No, sir; it would be very hard for me to give you the
369 name of the man who worked any particular pattern in my own room.

Cross-Q. 61. That pattern like Exhibit No. 3 was not made in the rib-machine room, was it?

A. It was not.

Cross-Q. 62. Could it be made on a rib machine?

A. Not to as good advantage as on a warp loom.

Cross-Q. 63. Did you get up the designs for the rib machines after 1866?

A. I did.

Cross-Q. 64. And you did not get up the designs for the warp looms, did you?

A. I did not.

Cross-Q. —. Were you superintendent of the rib-machine room, and your attention was directed to running that room and not the warp-room?

A. Not the warp-room.

Cross-Q. 66. Mr. Boot had charge of the warp-room?

A. Yes.

Cross-Q. 67. So that what you saw in the warp-room was only accidentally in passing there, was it not?

A. Yes; only if they had something new they might call me in and ask how I liked it or something of the kind, but I had nothing to do with the handling of the material.

Cross-Q. 68. Mr. Boot would frequently ask whether you liked patterns, did he?

A. Yes.

Cross-Q. 69. He would ask you that every week, would he not, about different patterns?

A. Yes; I might meet him in the machine shop getting something fixed and he would ask me to come to his room and there ask me how I thought such and such a pattern would answer, the same as I did with him.

Cross-Q. 70. You would be in the habit of doing that frequently?

A. Yes.

Cross-Q. 71. You cannot state how long the loom run on that pattern, can you?

A. No, sir.

Cross-Q. 72. Can you give me the date when it was put on the loom?

370 A. Not positively.

Cross-Q. 73. Nor the time when it was taken off?

A. No, sir.

Cross-Q. 74. You do not know how much they made of it?

A. No, sir.

Cross-Q. 75. You don't know where it went after it left the manufacturing department, do you, of your own knowledge?

A. Only that it went to the ware-room?

Cross-Q. 76. You only say that because everything went to the ware-room?

A. Yes; and by seeing it there in passing and having my attention brought to it.

Cross-Q. 77. Do you know to whom the fabric was sold?

A. No, sir.

Cross-Q. 78. Now, how soon was it after you took charge of the rib-machine room that you think you recollect of such fabric being made as "Exhibit Dolan No. 3?"

A. I think the first season after I took charge of the rib machine.

Cross-Q. 79. That was in the year 1866?

A. May or April, 1866 or 1867, as near as I can remember.

Cross-Q. 80. It was either in 1866 or 1867?

A. Yes.

Cross-Q. 81. You will swear to that?

A. As near as I can remember.

Cross-Q. 82. You say you saw that fabric laying in the ware-room. In what shape was it then?

A. Generally in strips when I saw it.

Cross-Q. 83. Did you ever see it in the size of a shawl or nubias in the ware-room?

A. Not that I remember.

Cross-Q. 84. Only in long strips?

A. Just as taken from the looms; can't say positively what it was made into, positively.

Cross-Q. 85. It was never made on the loom in wide sizes, was it?

A. Not as I know of.

Cross-Q. 86. All you recollect is its being made in long strips for trimming?

A. For trimming in long strips and about 8 inches wide.

Cross-Q. 87. Trimming for what?

371 A. Opera hoods, opera shawls, &c.; more for hoods, I think.

Cross-Q. 88. But the shawls themselves were made of some other material and trimmed with "Exhibit Dolan No. 3?"

A. Yes; trimmed with this, so far as I now remember.

Cross-Q. 89. That is all you remember of it?

A. We lost sight of them generally when it went to the ware-room.

Cross-Q. 90. All you remember seeing was for trimming?

A. In the way of trimming.

Cross-Q. 91. Do you recollect any of the other samples on the pages that are now open on which — "Exhibit Dolan No. 3?"

A. Yes.

Cross-Q. 92. Were they made at the same time?

A. Somewhere thereabouts.

Cross-Q. 93. Were three of the samples on those two pages made at the same time?

A. I think four or five were made about that time.

Cross-Q. 94. Some of the fabrics in that book are simply samples which were never made?

(Objected to as an assumption.)

A. I do not see any as I turn the pages over but what were made in more or less quantities.

Cross-Q. 95. By this you mean they were made?

A. Yes.

Cross-Q. 96. You do not know whether they were used or not?

A. Yes; we know they were used from the quantities that were made.

Cross-Q. 97. Did you ever see fabrics like Exhibits Nos. 28 and 30 marked with the initials "H. A. T." in this book, "Samples to 1869?"

(Objected to as incompetent, immaterial, and not warranted by the direct examination.)

A. Yes.

Cross-Q. 98. When was that?

A. During this same time.

372 Cross-Q. 99. At Thomas Dolan's?

A. Yes; at Dolan's factory.

Cross-Q. 100. And those samples were then being made?

A. They were.

Cross-Q. 101. And what were they used for—just the same as "No. 3?"

A. Yes.

Cross-Q. 102. For trimming hoods and shawls?

A. Yes.

Cross-Q. 103. Who designed those?

A. Mr. Boot, I think.

Cross-Q. 104. Can you tell me what quantities of those were made?

A. I cannot say.

Cross-Q. 105. Or how long they were on the looms?

A. No, sir.

Cross-Q. 106. Were those made on a rib machine or warp loom?

A. On a warp loom.

Cross-Q. 107. Could they be made on a rib machine?

A. Not so well as on a warp loom.

Cross-Q. 108. Could they be made at all on a rib machine?

A. Well, perhaps they could, but it would be a great deal of bother and trouble.

Cross-Q. 109. What is the distinguishing feature in these Nos. 28 and 30 as a fabric?

A. Nothing more than in the way they are joined together.

Cross-Q. 110. What is the distinguishing feature of No. 3 as a fabric?

A. We did not consider it any great distinguishing feature when it was made. It was merely joined to make a pretty trimming.

Cross-Q. 111. One is of heavier yarn than the other?

A. Heavier yarn, and there was also a double quantity of needles used in making it a double pillar. That is the only difference. Two needles were used in No. 3 and only one needle was used in Nos. 28 and 30.

Cross-Q. 112. If made of the same yarn and made up into trimming they would look just the same, would they not?

373 A. No, sir; one naturally looks heavier than the other on account of the double rib.

Cross-Q. 113. Suppose you used the same weight of yarn.

A. One would look heavier than the other; more bulky.

Cross-Q. 114. Would the same machine make all these fabrics?

A. Yes.

Cross-Q. 115. Do you remember in what width the fabric like No. 28 was made on the looms?

A. Nothing more than what I have said; from 3 to 4 and up to 8 inches wide, like No. 3.

Cross-Q. 116. Just the same as the heavier fabric?

A. Same width, so far as I remember.

Cross-Q. 117. Have you ever seen any of those fabrics or fabrics like them from the time you left Dolan's until about the time you made this affidavit of December 14, 1881?

A. None except what the young chap showed me who stopped at my place of business just before I made that affidavit.

Cross-Q. 118. Up to that time—after you left Dolan's—you had not seen this fabric for, say, 11 years?

A. Not unless I saw it on the street.

Cross-Q. 119. But you never saw it to notice it, did you?

A. No, sir.

Cross-Q. 120. Do you remember a man named Cornelius Jackson at Dolan's?

A. Yes; he was at Dolan's.

Cross-Q. 121. Was he there at the time this fabric was made?

A. I would not like to say; he might have been at journey work when this was made, as I think Mr. Boot was foreman at that time.

Cross-Q. 122. You never saw the fabrics on his loom, did you?

A. That I cannot say positively.

Cross-Q. 123. How long was it after you first went to Dolan's that you were put in charge of the rib department?

A. About five years.

Cross-Q. 124. Can you produce at the present time any piece of fabric like that, "Exhibit Dolan No. 3," which you can swear was made at Dolan's while you were there?

374 A. No, sir.

Cross-Q. 125. Can you tell me where I can find a piece of that fabric?

A. No, sir.

Cross-Q. 126. Can you tell me where I can find any article trimmed with that fabric?

A. No, sir; I cannot.

Cross-Q. 127. Nor direct me to any person who could tell me where I could find such an article?

A. No, sir.

Cross-Q. 128. Were you not in the habit of seeing a great many samples at Dolan's of different fabrics?

A. Yes.

Cross-Q. 129. Mr. Boot showed you while you were there a great many samples he got up, didn't he?

A. Yes.

Cross-Q. 130. And on the looms in the rib-room and on the warp looms you saw a large number of fabrics being made while you were there, didn't you?

A. Yes; a great many; some that were never used to any extent.

Cross-Q. 131. A great many of these designs gotten up, then, were never put into use?

A. Some not to any extent.

Cross-Q. 132. Who decided whether they should be used or not?

A. Thomas Dolan.

Cross-Q. 133. And when Dolan ordered the manufacture of a certain fabric to be stopped that was the end of it, was it?

A. It was taken off the loom; yes.

Cross-Q. 134. And not put on again without his orders?

A. Not until his orders; the orders came from him by the superintendent.

Cross-Q. 135. Do you remember men named Henry Henson, Wm. Ward, James Reed, Wm. Radford, and Thomas Langham being employed by Dolan while you were there?

A. Yes.

Cross-Q. 136. Some of those men were employed in the warp-room, were they not?

A. Yes.

375 Cross-Q. 137. Were they there at the time you recollect this fabric, "Exhibit Dolan No. 3," in the warp-room.

A. Yes.

Cross-Q. 138. You cannot say whether they worked on this fabric or not, can you?

A. Not positively.

Redirect examination:

Redirect Q. 139. Such fabrics, then, as were not approved by Mr. Dolan and were not placed upon the large looms ended with their being gotten up?

A. Yes.

Redirect Q. 140. Then all that were placed upon the large loom and manufactured had been approved by Mr. Dolan?

A. Yes.

Redirect Q. 141. Was Mr. Charles H. Salmon with Mr. Dolan at the time you were there?

A. He was.

Redirect Q. 142. And employed as superintendent of the mill?

A. Yes.

Redirect Q. 143. I understand you that, while you cannot fix definitely the time when fabric of the construction of "Exhibit Dolan No. 3" was manufactured, you can and do swear positively that it was manufactured before you left Dolan's employ?

(Objected to as leading.)

A. I do.

Redirect Q. 144. And while you were at Dolan's double-pillared fabric of the construction such as shown by "Exhibit Dolan No. 3" and single-pillared fabric of the construction as shown by "Nos. 28 and 30" were both manufactured at Thomas Dolan's factory?

(Objected to as leading.)

A. Yes; both were manufactured.

Redirect Q. 145. In manufacturing fabrics such as Exhibits No. 3 and Nos. 28 and 30 and similar fabrics straight strips
376 would be first formed and thereafter joined together, forming a mesh?

A. Not as a usual thing. They were generally joined in the loom.

Redirect Q. 146. But the strips are woven first and then joined together in the loom, forming the meshes?

A. It can be all woven at the same time in one solid piece as well as strips.

Recross-examination:

Recross-Q. 147. Are the fabrics Nos. 28 and 30 joined together in the same manner as "No. 3?"

A. I think they are.

Recross-Q. 148. They are woven in the same manner on the loom?

A. I think they are, though there may be some difference in the way they are joined.

Recross-Q. 149. Then in that respect there is no difference between these fabrics?

A. No difference between them.

Recross-Q. 150. You do not know of your own knowledge whether Dolan ever approved the fabric "No. 3," do you?

A. I never heard him say so; but, then, we always supposed it had been when it was put on the large loom.

Recross-Q. 151. Then that is all you know about that fabric being approved?

A. That is all.

Recross-Q. 152. Have you any written memorandum or writing of any kind that would go to show that this fabric was made at Dolan's at the time you were there?

A. No.

Recross-Q. 153. You have nothing but your recollection about the matter?

A. That is all.

Recross-Q. 154. That is what you have relied on in testifying?

A. Yes.

Redirect examination:

Redirect Q. 155. You know you left Dolan's employ about 1870, do you not?

377 A. Yes.

Redirect Q. 156. And do you not also know that you saw that fabric No. 3 there prior to your leaving Dolan's employ?

A. Yes.

Recross-examination:

Recross-Q. 157. That is only your recollection, is it?

A. Yes.

(Examination concluded.)

Subscribed and sworn to before me this 22d day of March, A. D. 1883.

——.

NEW YORK, *March* 5, 1883—11 a. m.

Met pursuant to agreement.

Present: Counsel for respective parties.

Defendants' counsel offers in evidence copy of design letters patent No. 10388, granted A. G. Jennings January 1, 1878, for "design for lace purling," and the same is marked "Defendants' Exhibit Jennings' Design Patent No. 10388."

HENRY B. RENWICK, a witness called on behalf of defendants, testifies as follows:

By Mr. BENNETT:

Q. 1. What is your name, age, residence, and occupation?

A. Henry B. Renwick; 65 years of age; reside in the city of

New York, and my principal occupation for many years last past has been in connection with patents and patented machinery and processes and fabrics; also designs. During the last 28 years I have frequently, during each year, been examined as expert in suits in which patents were in question.

Q. 2. Have you examined and do you understand letters
378 patent No. 218,032, granted A. G. & W. P. Jennings July 29, 1879, for "improvement in lace purling;" and, if so, what do you understand to be the improvement described and claimed in said patent?

A. I have frequently read the patent referred to in the question, and believe I understand the invention therein described and referred to in the claims thereof. The fabric is a variety of what is commonly known as a purl fabric, and it can be conveniently made on warp looms (so called), which are a species of knitting machines, such as I saw last at the factory of Thomas Dolan & Co., in Philadelphia, in September or October, 1881. In the fabric of the patent what is called the warp threads are knit into a chain, such a chain as is formed from a single piece of string by a boy with his fingers in passing one loop of string through the last-formed loop of the same string. Two such chains are knit side by side, and are the meshes "*a*" of the patent. The machine knits a series of these double chains some distance apart, and while the chains are being knit loops of yarn—the loops "*b*" of the patent—are passed through the chains by proper yarn-carriers, these carriers traversing to and fro on each side of the chain and producing a sort of feather-like fabric, the chains representing the stem of the feather. Each set of two chains form what is called in the patent a "pillar," and after a certain length of these pillars have been knit each pillar is fastened to its neighbor by crossing or joining the chains "*a*," and after they have been thus joined the pillars are again knit separately for a certain distance, and then the meshes or chains "*a*" are again joined together. This mode of manufacture produces a reticulated fabric, and when a sufficient length of it has been formed the pillars as a whole are knit for a certain distance without any joining of the chains of the pillars, thus forming a certain sort of fringe. This fringe, though of less length than that shown in the drawing, would be formed whenever the fabric is cut into through the line of joining of the meshes "*a*," and the fabrics, as I know, are usually knit in lengths and cut apart, and the fringe of the patent is formed by omitting the joining of the chains for a greater distance than usual and then cutting through the pillars. The patent is clear on the subject that the reticulation is formed by joining the chains or meshes "*a*."

379 The patent states that, instead of two, three or more rows of meshes or chains "*a*" for each pillar may be used; and, further, that "were it not for the multiple row of meshes in each pillar the loops '*b*' would turn up and thereby destroy to a great extent the beauty of the fabric which — is desired to produce by this invention."

This statement is incorrect, and unless the chains or rows of meshes are placed at a distance apart, as it is stated they may be in the patent

and not adjoining each other, as shown in the drawing, the drawings themselves showing that the loop will turn up as purl, *and* the fabric when made presents, as I know, the purled appearance, as shown in the drawing.

The phrase above quoted appears to have been put in the patent for the purpose of arguing that the patent is not based on a mere duplication, the patent and claims, as a whole, being strictly limited to a fabric in which two or more rows of chains are used for each pillar, and not claiming a fabric and fringe precisely the same in all respects, except that there is only one chain in each pillar.

The claims of the patent refer to the reticulated lace fabrics which I have described, consisting of chains and loops, where there are two or more continuous rows of meshes to each pillar, whereby the loops are held flat. Now, this language may be construed as claiming the fabric shown in the drawing, where two rows of chains are used to each pillar which do not hold the loops flat, so it may be construed to cover the fabric only when the chains are placed so far apart that they will hold the loops flat; but in my opinion the claim is intended, when taken in connection with the specification, to cover the fabric, whether the chains adjoin as stated in the patent or are placed at a distance apart in each pillar so that "the loops '*b*' will traverse the space between the two rows" of chains.

The second claim refers to the same fabric with the same pillars carried out so as to form a fringe.

The fabric is not limited to the special distance of projection of the loops from the sides of the chains, nor to the distance apart of the loops, nor to loops all projecting to the same distance from the chains; and I should be of this opinion even if there were no words in the patent to that effect, because the mode of knitting or
380 concatenation of the thread would be the same, with loops of the same or different length or equally or unequally distributed along the pillars.

Q. 3. Have you examined and do you understand design letters patent No. 10448, granted Warren P. Jennings February 12th, 1878, for "designs for fringed lace fabric;" and, if so, what do you understand to be the design described and claimed in said patent?

A. I have read and do understand the design patent referred to in the question, and believe I understand the fabric therein described, although the specification and photograph are not so definite and exact as they should be. The fabric described in this design patent is precisely the same fabric composed of meshes of chains and loops (the chains being united at intervals so as to form a reticulated fabric) as that described in the fabric patent No. 218,032, referred to in my last answer, save and except that there is only a single chain to each pillar in the fabric of the design patent, while, on the contrary, in the fabric patent 218,032 there are two chains to each pillar, but in both fabrics the loops are the same, are held in the same way by the chain, and the chains are united in the same way to form the reticulation, the sole difference between the two being that the chains are duplicated in the fabric patent 218,032. The single chains in the design patent and the double chains in the fabric patent per-

form precisely the same duty, viz., the duty of confining the loops and of attaching the pillars to its neighbors by the crossing and union of the chains.

Q. 4. Have you examined and do you understand the construction of the fabric in book marked "Samples to 1869, Thomas Dolan," and marked "Exhibit Dolan No. 3?" If so, compare it with the fabrics shown, described, and claimed in the A. G. & W. P. Jennings patent No. 218,032.

A. I have frequently examined the fabric Exhibit Dolan No. 3 mentioned in the question, having first seen it in 1881. It is precisely the same fabric as that described in the patent to Jennings, No. 218,032, in that modification shown in the drawings of the patent where the two chains of each pillar are in close proximity to each other, as shown in the drawings. In the autumn of 1881 I gave directions to have this sample, Exhibit Dolan No. 3, reproduced in a whole piece at Mr. Dolan's factory, and know that when that
381 fabric was in use or pulled so as to be ready for use that the loops of the pillars purled or turned at different angles, as shown in the drawings of the fabric patent No. 218.032. The fabric Exhibit Dolan No. 3 is made with two adjoining chains of warp thread or meshes for each pillar, with loops of yarn projecting laterally from these chains and held in position by passing through the loops of the chain, and the chains of warp thread are attached to their neighbor at intervals, as described in patent No. 218,032, so as to form a reticulated fabric. Fabric Exhibit No. 3 is in all respects constructed exactly in the same way that the fabrics shown in the drawings of patent No. 218,032 is constructed.

Q. 5. Have you examined and do you understand the design letters patent 10448 granted Warren P. Jennings February 12, 1878, for design for a fringed lace fabric; and, if so, what do you understand to be the design covered by the claim of said patent?

A. The patent is somewhat difficult to understand, as the photograph is bad, but, as I understand it, the fringe is the same fabric as is represented in the fabric patent 218,032, viz., a fringe composed of pillars, which pillars are formed of a chain of meshes of warp thread enclosing loops of yarn which project laterally from each side of the chain. I say the same fabric, but the fringe shown in the design patent No. 10448 has not the meshes connected together so as to form a reticulated fabric as a whole, and as far as I can discover there is only one chain to each pillar instead of two or more chains for each pillar. The chains of this design patent 10448 is liable to two constructions when taken in connection with the specification. The claim may be to the design of the fabric as a whole, with a fringe attached, or a claim to the design of the fringe irrespective of the appearance or the design of the fabric to which it is attached.

The photograph, which is the drawing of the patent, shows both the fabric and a fringe and the claim is to "the design for a lace fabric provided with disconnected doubly looped fringes B," &c., and if it were not for these words in the body of the patent, viz., "this invention relates to a new looped fringe applied in series to

lace fabrics," I should be of opinion that the claim certainly referred to both the fringe and the fabric. As far as I can ascertain
382 from the drawings the fringe is made in one piece with the fabric and on the same loom, the warp threads being extended and forming chains to which the loops are applied and by which the loops are held.

Adjourned until 2 p. m., March 5, subject to Mr. Renwick's ability to be present, he being engaged to-morrow by a prior engagement.

NEW YORK, *March* 7, 1883.

Met pursuant to adjournment.

Present: As before.

Q. 6. Have you examined and do you understand the construction of the alleged infringing nubia, marked "Complainants' Exhibit Dolan Nubia A?"

A. I have examined the nubia referred to in the question, which is a maroon-colored nubia, and believe I understand how it is constructed.

Q. 7. Compare the said nubia, "Complainants' Exhibit Dolan Nubia A," with the fabric shown, described, and claimed in the said Jennings patent No. 218,032, of July 29, 1879, and with the fabric "Exhibit Dolan No. 3," in book "Samples to 1869, Thomas Dolan."

A. All three of the fabrics named in the question are the same; all three have pillars composed of two sets of adjoining chains or meshes of warp threads, said chains supporting loops of yarn which project laterally on each side of the chains, and a series of the pillars so formed having been knit side by side; have each pillar united at intervals to its neighbors by crossing the chains or meshes of one pillar into the chains or meshes of the adjoining pillars, and the nubia and the fabric of the patent have fringes formed by carrying out the pillars as a whole to a certain distance without uniting the chains or meshes of warp thread of adjoining pillars. The fringe of the nubia differs in appearance from the fringe of the patented fabric, because the loops do not during the whole length of
383 each member of the fringe project laterally from the pillars, each member of the fringe having intervals in it where the loops and both the chains appear to be all knit together, so as to form a single sash of braid. Those parts of each member of the nubia fringe which lie between these short lengths of braid are made in the same way as the whole length of each member of the fringe described and represented in the patent No. 218,032.

Q. 8. Have you examined and do you understand the construction of the alleged infringing nubia marked "Complainants' Exhibit Dolan Nubia B?"

A. I have examined the nubia referred to in the question, which is a party-colored nubia, and believe I understand how it is constructed.

Q. 9. Compare the said nubia, "Complainants' Exhibit Dolan Nubia B," with the fabric shown and described and claimed in the

said Jennings patent No. 218,032, of July 29, 1879, and with the fabric "Exhibit No. 3," in book "Samples to 1869, Thos. Dolan."

A. The party-colored nubia referred to in the question, "Exhibit Dolan Nubia B," is a different fabric from both the fabric of the patent 218,032 and the fabric "Exhibit Dolan No. 3" of the question. In both the latter fabrics the meshes of warp threads or chains of the pillars are crossed into the chains of adjoining pillars so as to form the reticulation. On the contrary, in the party-colored nubia the loop threads are carried over from one pillar into the neighboring pillar. The party-colored nubia is, therefore, a concatenation of threads differing both from concatenation of the threads of the patent 218,032 and from the Exhibit "Dolan No. 3" of the question. I understand the first claim of the patent 218,032 to be for a certain definite concatenation of threads which forms a reticulated fabric, and the second claim to be for that same fabric in combination with the fringe; and, as the reticulated fabric of the party-colored nubia is a different fabric from that of the patent, it is my opinion that the party-colored nubia does not contain the invention referred to in either of the claims of patent 218,032, stating, perhaps, in repetition, but in order to avoid all misconceptions, that in my opinion the second claim of this patent is not for the fringe alone and by itself, but to that fringe in combination with the fabric which is claimed in the first claim.

384 Q. 10. Compare the nubia "Complainants' Exhibit Dolan Nubia A" with the Jennings design patent No. 10448 of February 12, 1878, and state if said nubia contains the design claimed in said design patent 10448.

A. I have already said that the claim of this design patent may be construed in two different ways, and have briefly described the structure of the fringe, which is made in one piece with the fabric by carrying down chains formed of the warp threads of the fabric, although I know that the question in dispute, so far as this design patent is concerned, turns upon the substantial identity of appearance between the defendants' structure (the nubia of the question) and the structure represented in the drawings of patent No. 10448. If the court shall hold that the claim of this patent includes both the fabric and the fringe, then the want of identity between the design of the nubia and that claimed in the fabric is apparent at a glance, because the reticulated purl fabric of the nubia is entirely different in appearance from the flat lace-like fabric of patent No. 10448.

If the court, however, shall hold that the claim relates to the design of the fringe alone, then my opinion would be the same, because the fringe of nubia "A" is distinguishable at a glance from the fringe represented in the drawings of the patent No. 10448. The patent states that "each fringe B is formed with loops at both sides of a central stem or rib and along its entire extent as shown, thus producing a peculiar full and yet loose effect."

And this statement is a true statement of the appearance of the fringe represented in the drawing. Now, in the fringe of nubia "A" the loops are not along the entire extent of the cen-

tral stem or rib, and the loops of the fringe, as a whole, do not have a full effect, but, on the contrary, have a ragged effect, this raggedness of effect to the eye being produced by leaving the central stem bare at certain intervals—*i. e.*, without any loops projecting from either side of it. Each member of the fringe of the patent resembles somewhat in appearance a short, soft feather, the vanes thereof—that is, the projections from the central stem—being continuous from end to end, while each member of the fringe of the nubia A resembles a feather with the vanes on both side of the stem and opposite to each other, cut away at intervals so as to
385 leave gaps, the stem alone remaining in these intervals. Now, a feather with such notches cut in it would be distinguishable in an instant from an unnotched or perfect feather, and the distinction would be, if anything, more easily made when a row of notched feathers was compared with a row of unnotched feathers, and it is my opinion, derived from my own occular observation, that the fringe of nubia A is a different design from the fringe of the patent No. 10448.

Q. 11. Compare the nubia "Complainants' Exhibit Dolan Nubia B" with the Jennings design patent No. 10448, of January 9, 1878, and state if said nubia contains the design claimed in said design patent No. 10448.

A. If the court shall construe the claim of patent No. 10448 to include the fabric — well as the fringe, it is evident, and it is my opinion, that the party-colored nubia of the question does not exhibit to the eye any such appearance as that of the drawings of the patent. The latter is a flat-lace fabric; the former is a purled and looped fabric. If the court shall hold that the claim relates to the fringe alone, then my opinion is the same, because in the fringe of this party-colored nubia there is not found what the patent says to be the characteristic appearance of its fringe, viz., "a fringe formed with loops at both sides of a central stem or rib along its entire extent, as shown." Now, directly contrary to this, the fringe of nubia "B" has in no part of its length loops projecting laterally on both sides of a central stem. All the loops in it project to one side of the stem only, groups projecting first on one side thereof and then on the other alternately, and in consequence of this arrangement of the loops the fringe, instead of producing a peculiar full effect, produces a ragged and torn effect, the fringe in nubia B being more ragged-looking, if anything, than the fringe in nubia "A." In my opinion, the fringe of nubia B is not the same in appearance as the fringe in the patent No. 10448.

Q. 12. In your opinion, would an ordinary purchaser be deceived in purchasing the fringe of the nubias Complainants' Exhibits Dolan's Nubias "A" and "B" for or believing it to be the fringe covered by the said Jennings design patent No. 10448?

A. In my opinion, he would not.

Q. 13. Have you and can you produce a reticulated fabric,
386 such as shown and described in the said Jennings patent No. 218,032, having but a single row of meshes "A" in each pillar instead of two, three, or more rows, as called for by the patent?

A. I have and produced it. In this fabric the chains of meshes "A" are connected together, and each chain supports rows of laterally projecting loops. In three places in this fabric the chains have not been connected for a considerable interval, and are then again connected together at short intervals as before. If the fabric produced by me be cut through where the chains are not connected together for a considerable interval or at the last point of connection of the chain, then in the former case one long and in the latter case two short fringes will be produced.

The fabric produced is offered in evidence and marked "Defendants' Exhibit Single-Pillared Nubia."

Defendants' counsel offers in evidence a nubia, which he states is the same in construction as the nubia "Complainants' Exhibit Dolan Nubia A," and which nubia so produced is now in the condition in which said nubias were sold, and the same is "Defendants' Exhibit Dolan Nubia."

HENRY B. RENWICK.

Subscribed and sworn to before me this 22d day of March, A. D. 1883.

JAMES F. DOYLE,
*Notary Public, New York Co.*

387 UNITED STATES PATENT OFFICE.

ABRAHAM G. JENNINGS, of Brooklyn, New York.

*Design for Lace Purling.*

Specification forming part of Design No. 10388, dated January 1, 1878; application filed December 17, 1877.

To all whom it may concern:

Be it known that I, Abraham G. Jennings, of Brooklyn, Kings county, New York, have invented a new and original design for lace purling, of which the following is a specification.

Figure 1 represents a photographic illustration of my new lace purling. Fig. 2 is a photographic illustration of the same design made of coarser thread.

This invention relates to a new design for a lace fabric; and it consists in providing the pillars thereof with more or less irregular laterally-projecting loops, thereby imparting to the entire fabric a puckered, wavy, purl-like appearance, which is indicated in the photograph. The loops on the pillars are placed close together to increase the effect.

I claim—

The design for a lace purling the pillars whereof are provided with irregular laterally-projecting loops, substantially as shown.

ABRAHAM G. JENNINGS.

Witnesses:
T. B. MOSHER,
A. v. BRIESEN.

388 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Hoyt H. Wheeler, judge.

ABRAHAM G. JENNIGS & *al.*
*vs.*
HENRY R. KIBBE & *als.*

SAME
*vs.*
THOMAS DOLAN.

The above causes coming on this day for final hearing, together upon pleadings and proofs, Mr. Antonio Knauth is heard in behalf of complainants; Mr. Arthur v. Briesen is heard in behalf of complainants; Mr. John R. Bennett is heard in behalf of defendants.

*Curia advisari vult.*

389 Circuit Court of the United States, Southern District of New York.

ABRAHAM G. JENNINGS *et al.*
*vs.*
HENRY R. KIBBE & *als.*
In Equity.

WHEELER, *J.*:

These suits are brought upon design letters patent No. 10448, dated February 12, 1878, and granted to Warren P. Jennings for a design for a fringed lace fabric, and letters patent No. 218,032, dated July 29, 1879, and granted to Abraham G. Jennings, and Warren P. Jennings for an improvement in lace purling. The design patent has before been adjudged to be valid in this court between the same parties to one of these cases, but upon different infringing articles. Jennings *v.* Kibbe, 20 Blatchf. C. C., 353; S. C. 10 Fed. Rep., 669. The design is for a lace fabric having a fringe made of a series of stems connected to the fabric and not to each other, "with
390 loops at both sides of a central stem or rib along its entire extent." The infringing articles are nubias having such fringes of stems, but the stems have two central ribs, with loops projecting alternately at the sides and not on both sides along its entire extent. There are so many of these things that the differences are necessarily small, and small differences make different designs. The patent is not for a design for a nubia, but of a fringed lace fabric, and the novelty of the patented appertains to the fringe and not to the rest of the fabric by the terms of the patent. Nubias with this fringe might appear to be the same as those with the patented fringe, if the fringe should not be observed as such; but observation of that would discover the difference readily. The similarity would arise

from the body of the nubias rather than from the fringe, and as fringed fabrics the designs as to the fringes appear to be different. This patent is not, therefore, infringed by this article.

The novelty of the invention described in the other patent
391 is denied. The anticipation relied upon is a sample in a book of samples of the defendant Dolan purporting to contain samples *of books* made and sold before that invention. No article of that manufacture is shown besides the sample, and that is shown to have been put in the book since the invention and since controversy about it. The evidence of the defendants tends to show that the same one was taken out and replaced. The appearance of the book indicates that a sample of different color and size had been in that place. The force of the evidence depends upon the identity of that sample. So much doubt is thrown about it upon the whole proof as to bring it below the degree of certainty requisite to defeat a patent. After repeated examinations serious doubts remain about the production of that article as claimed. The proof should overcome these doubts in order to invalidate the patent, and, as it does not, the patent stands as valid. The infringement seems to be clear, unless the patent is limited to the particular mode of reticulation described.

The pillars of the fabric appear to be precisely like those of
392 the patent. The reticulation appears to be in all respects the equivalent of that of the patent. The pillars are really the principal things, and the substance of the invention appears to be taken.

Let there be a decree for the orators accordingly for an injunction and account in each case, without costs, except on the accounting.

ANTONIO KNAUTH AND
A. v. BRIESEN, *For Plaintiff.*
JOHN R. BENNETT,
*For Defendant.*

(Endorsed:) U. S. circuit court, southern district of New York. Jennings & *al. vs.* Kibbe & *al.* Opinion. Wheeler, 9.
(File-mark:) U. S. circuit court. Filed Jan. 10, 1885. Timothy Griffith, clerk.

393 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the court-rooms of said court, in the city of —, in the State of New York, on the — day of January, 1885.

Present: The Honorable Hoyt A. Wheeler, judge.

ABRAHAM G. JENNINGS and WARREN P. JENNINGS, Complainants,
*vs.*
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve & Co., Defendants. } In Equity.

This cause having come on for final hearing upon the bill of com-

plaint, the answer thereto of the defendants, the replication of the complainant to such answer, and proofs taken on the part of the complainants and on the part of the defendants, and Mr. Arthur v. Briesen & Mr. Antonio Knauth having been heard on behalf of the complainants and Mr. John R. Bennett on behalf of the defendants:

Now, therefore, upon consideration thereof and on motion of Briesen & Steele, solicitors for the complainant, and due deliberation had, it is hereby ordered, adjudged, and decreed that the design letters patent of the United States issued to Warren P. Jennings on the 12th day of February, 1878, numbered 10448, for a fringed lace fabric, have not been infringed by the defendants herein; and that the letters patent of the United States issued to Abraham G. Jennings & Warren P. Jennings on the 29th day of July, 1879, numbered 218,032, for lace purling, are good and valid in law; and that the complainants herein are entitled to the exclusive rights in, to, and under said letters patent, and in and to the invention and improvements secured thereby, and that the title thereto is duly vested in the complainants; and that the defendant has infringed upon the said letters patent No. 218,032 and upon the exclusive rights of the complainant thereunder by making, using, and vending to others to be used lace fabrics made according to and employing and containing the invention and improvements described in said letters patent and claimed in the claims thereof.

394 And it is further ordered, adjudged, and decreed that the complainants do recover from the defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, and their firm of Kibbe, Chaffee, Shreve & Co. the gains, profits, savings, and advantages which the said defendants have derived, received, or made by reason of the infringement of the complainants' exclusive rights under said letters patent No. 218,032 by any manufacture, use, or sale of — containing the invention and improvements described in said letters patent and claimed in the claims thereof or any of them; and that the said complainants do also recover, in addition thereto, any and all damages which they have sustained by reason of such infringement of their exclusive rights by the said defendants; and it is hereby referred to Timothy Griffith, Esquire, as master, the parties hereto consenting, in writing, to his appointment because of the convenience of access to the records of the court and the exhibits on file therein, to ascertain, take, and state the number of lace fabrics made and the number used and the number sold by the said defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, and their firm of Kibbe, Chaffee, Shreve & Co. in infringement of the claims of said letters patent or any of them and the number of such lace fabrics which the said defendants have on hand and the gains, profits, savings, and advantages derived by the said defendants from and through the said infringements, and to assess the damages thereby suffered by the said complainants, and to report thereon to the court with all convenient speed; and the said defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K.

Thompson, & Henry G. Kibbe, are hereby directed and required to attend before the said master from time to time as required by said master, and to produce before him such books, papers, exhibits, statements, vouchers, and documents as they may be directed by the said master to produce, and to submit to such oral or other examination as the master may direct.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued out of and under the seal of this court enjoining and restraining the defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, & Henry G. Kibbe, and each and every of them, and their firm of Kibbe, Chaffee, Shreve & Co., and their and each of their servants, agents, attorneys, and workmen from directly or indirectly making or causing to be made, delivering, vending, or causing to be sold, offering for sale, using or causing to be used in any manner any lace fabrics like or similar to those which the said defendants have heretofore made, used, or sold containing or embodying the invention and described in said letters patent numbered 218,032
395 and claimed in the claims thereof or any of them, and from counterfeiting or imitating the said invention and improvements or any part or parts thereof in any way whatsoever.

And it is further ordered, adjudged, and decreed that the complainants do not recover from the defendants the costs of this suit up to the entry of this decree, and that the question of costs on the accounting and *that* the question of increase of damages and all further questions be reserved until the coming in of the master's report.

(Signed) HOYT H. WHEELER.

We hereby consent to the appointment of Timothy Griffith, Esq., as master herein, for the reasons set forth in the above decree.

Dated New York, Jan'y 19, 1885.

(S'g'd) BRIESEN & STEELE,
*Compl'ts' Sol'r's.*

(S'g'd) JOHN R. BENNETT,
*Def'ts' Sol'r.*

(Endorsed:) Circuit court of the United States for the southern district of New York, in the second circuit. In equity. Abraham G. Jennings & *al. vs.* Henry R. Kibbe & *al.* Interlocutory decree. Briesen & Steele, sol'rs for compl'ts, 229 B'dway, N. Y. city. (File-mark:) Filed in court Jan. 19, 1885.

396 United States Circuit Court, Southern District of New York.

A. G. and W. H. JENNINGS
*vs.*
KIBBE, CHAFFEE, SHREVE & Co. } In Equity.

*Testimony Taken Before Timothy Griffith, Esq., as Master, Pursuant to an Order of Court Dated January 19th,* 1885.

NEW YORK, *February 12th,* 1885—2 p. m.

Met pursuant to notice.

Present: Mr. A. v. Briesen, for compl'ts; Mr. John R. Bennett, for def'ts.

Counsel for compl'ts requests the master to make an order requiring the def't to produce a written statement showing the number of infringing articles sold, the time of sale, and to or through whom sold.

397 The master so orders.

Adjourned.

NEW YORK, *February 25th,* 1885—2 p. m.

Met pursuant to adjournment.

Present: Mr. Turk, for compl'ts, and Mr. J. R. Bennett, for def'ts

Def'ts' counsel produces the statement in compliance with the order of the master of Feb'y 11, 1885, and requests that the same be marked for identification. The statement produced is so marked.

Compl'ts' counsel objects to the statement produced on the ground that it is not in compliance with the order of Feb. 11, 1885.

398 GEORGE SHREVE, examined by compl'ts' counsel and duly sworn, deposes as follows:

Q. 1. Are you one of the defendants in this case?

A. I am.

Q. 2. By whom was the statement produced here to-day by you prepared?

A. By one of our book-keepers.

Q. 3. Was it prepared under the supervision of any one of the defendants?

A. Under my supervision.

Q. 4. Was this statement examined by you after it was prepared?

A. It was.

Q. 5. And did you satisfy yourself as to the correctness of the statement?

A. I did.

Q. 6. In examining this statement did you compare it
399 with entries in any book or books?

A. I did.

Q. 7. Please tell us what books.

A. The account sales book.

Q. 8. What is the nature of the entries made in this sales book?

A. They are goods for which we account to the manufacturers.

Q. 9. Does the sales book only show the sales made by you, or does it show something else beyond that?

A. It shows only the sales made by us.

Q. 10. Is the sales book a book of original entry?

A. It is not.

Q. 11. From what are the entries made in the sales book taken?

A. Taken from our regular sales books.

Q. 12. Have you any book which would show the amount of goods here in suit which you have on hand at the present time?

A. No; we have none on hand.

Q. 13. What is the nature of your business?

A. Selling goods on commission.

400 Q. 14. Have you any books which would show the amount of the goods here in suit received by you?

A. We have.

Q. 15. What are those books?

A. Commission invoice book.

Q. 16. What does the statement produced by you to-day show?

A. It shows the sales of all the double-pillar goods received by us from Thomas Dolan.

Q. 17. Does this statement show all the goods received by you from Thomas Dolan?

A. It does.

Q. 18. Does it show to whom such goods were sold by you?

A. It does not.

Q. 19. Does it give the dates of the sales?

A. No.

Q. 20. To what do the dates that appear on that statement refer?

A. They refer to the dates of the account of sales as rendered to Thos. Dolan & Co.

Q. 21. Does this statement show the prices received by you for the goods you sold?

A. It does.

401 By the MASTER:

Q. 22. Did you receive the goods included in the statement produced to-day from Thos. Dolan & Co. on consignment, sell them as commission merchants, and make the usual return of the sales and proceeds to Dolan & Co.?

A. We did.

(Adjourned.)

NEW YORK, *March 10th*, 1885.

Met pursuant to adjournment.

Present: Mr. A. v. Briesen, for compl't-; Mr. John R. Bennett, for defendant-.

Examination of the witness, GEORGE SHREVE, continued:

Q. 23. Have you compared the entries in the commission invoice

book with those in the account sales book to ascertain the
402 number of double-pillar nubias received by you and the number sold?

A. I have not.

Q. 24. Do you know whether or not any of these double-pillar nubias were returned to Dolan unsold?

A. There were none returned.

Q. 25. At what price did you sell these nubias?

A. At the prices noted on the ac. sales. I mean the statement. The prices in the columns are the prices at which they are sold per dozen, and the percentage marks show the discount allowed for cash.

Counsel for compl't- requests the master to order a more complete compliance with the order of Feb'y 12th, 1885.

The master directs compliance with the above-mentioned order.

Def'ts' counsel excepts to the order of the master, as the state-
403 ment already furnished is all that is necessary from which to ascertain and report the number of the infringing fabrics and the profits and damages, if any, resulting therefrom, the precise dates of sale, also the names of the parties to whom sold, being unnecessary so far as this accounting is concerned; that if compl'ts desire to verify the statements furnished they can do so by sending an accountant to the counting-house of the def'ts and compare the same with the books; and def'ts' counsel requests that the record be certified to the court if compliance with the order be insisted on, as he shall advise his clients, in view of the fact that an offer to produce the books has been made, to decline to furnish the statement, and,

that there may be no misunderstanding, defts' counsel now
404 spreads upon the record the willingness of the defendants to produce their books or to have them examined, whichever may be preferred.

By the MASTER: The offer to produce the books is subsequent to the last order referred to.

Counsel for compl't- requests the master to order that the defendants at the next meeting produce either the statement ordered on the 12th of February or, in lieu thereof, the "regular sales books" and the "commission invoice books" to which this witness has testified.

Ordered accordingly.

NEW YORK, *April* 28, 1885—2 p. m.

Met pursuant to adjournment.

Present: Counsel as before.

Examination of Mr. SHREVE continued:

Defendants' counsel states that the witness is in attendance
405 with the books, as ordered by the master.

Q. 23. What books do you now produce?

A. Commission invoice book and three sales books.

Q. 24. Are these the books from which the statement already produced by you was made?

A. They are; at least a portion of the books. They are as many as I could carry, weighing 12 lbs. apiece, and when you are through with them the others will be forthcoming.

Q. 25. What other books are there than those you have produced to-day?

A. There are, I think, seven more sales books.

Q. 26. Will you please point out in these books which you have produced to-day those portions to which the entries in the statement produced by you and which was taken from these books relate?

406 A. I can't do it; I don't know how. The books are there, but I am not at all familiar with them.

Q. 27. Do you know any one who can do what I have requested of you in Q. 26?

A. I have no one in my mind now.

Q. 28. Will you make inquiries and let us know at the next meeting?

A. I don't know whether I will or not. The books are here, open for inspection.

Q. 29. How do you know that these are a portion of the books from which some of the items in the statement produced by you were taken?

A. They are the books in which such accounts are kept.

Counsel for compl't asks that the books produced by the witness be marked for identification of this date, which is done.

407 Counsel for compl't asks the master to order that the remainder of the books be produced at the next session, so that all the books may be present before the master when the examination of this witness is continued.

Ordered accordingly.

Adjourned.

NEW YORK, *May 14th*, 1885—2 p. m.

Met pursuant to adjournment.

Present: Counsel as before.

Examination of Mr. G. SHREVE continued:

Q. 30. What books do you produce here to-day?

A. There are nine sales books and one commission invoice book.

Q. 31. Are the nine sales books regular sales books or account sales books?

A. Regular sales books.

408 Q. 32. Can you point out any entry in one of your sales books that relates to these nubias?

A. I point to one on p. 616, Book 39, date November 5, 1881. The entry reads "1103, 2 doz. nubias, $7.00, $14.00.

Q. 33. What kind of nubias are those numbered 1628, 1604, and 1622, in the same entry?

A. Those are ordinary wool nubias.

Q. 34. Are they not double-pillar nubias?

A. They are not.

Q. 35. How do you know that to be the fact?

A. These nubias were made to commence at 1100 up to 1121. I know this from the invoice book.

Q. 36. Will you please show me from the invoice book how you know that certain numbers are double-pillar nubias and other numbers are not?

A. I know that when we commenced to make those nubias
409 we commenced to number them at 1100.

Q. 37. Do you mean to testify here that none of the nubias you received of Thos. Dolan & Co. except those numbered from 1100 to 1121 had the double pillars?

A. I do.

Q. 38. Did you yourself compare the statement you have produced with any book or books?

A. I did.

Q. 39. Please name that book.

A. Account sales copy book.

Q. 40. I notice in your invoice book that new number, 1201, 1202, and 1203, nubias were started about the last of November, 1881. Can you tell us what kind of nubias they were?

A. I cannot. I don't know that they were nubias.

Q. 41. On p. 145 of the invoice book I find entries under numbers 1101, 1102, 1103, 1104, 1105, 1107, 1108, 1109, and 1110. What do they refer to?

410 A. Stock on hand Jan'y 1, 1882.

(Sg'd) GEO. H. SHREVE.

Sworn before me—

(Sg'd) TIMOTHY GRIFFITH, *Master, &c.*

411 *Defendants' Account. Produced Feb'y* 25, 1885.

Sales by Kibbe, Chaffee, Shreve & Co., commission merchants, 71 & 73 Worth St., New York, of double-pillar nubias for account of Mess. Thomas Dolan & Co.

| | | | | | | |
|---|---|---|---|---|---|---|
| Nov. 30, 1881. | 1102 | $\frac{1}{12}$ dozens | | $7 | 50 | 5% |
| | 1103 | $2\frac{1}{2}$ | | 7 | 00 | " |
| | 1104 | $2^2$ | | " | | " |
| | 1106 | 5 | | 7 | 50 | " |
| | 1107 | 3 | | " | | " |
| | 1106 | 1 | | " | | " |
| Dec. 31, '81. | 1106 | 1 | | 7 | 50 | 5% |
| July 31, '82. | 1111 | $39\frac{1}{2}$ | Net | 6 | 00 | |
| | 1112 | 29 | | " | | |
| | 1113 | 15 | | " | | |
| | 1114 | $14\frac{1}{2}$ | | " | | |
| | 1115 | $\frac{1}{2}$ | | " | | |
| | 1116 | 13 | | " | | |
| | 1117 | 12 | | " | | |
| | 1118 | 4 | | " | | |
| | 1119 | $22\frac{1}{2}$ | | " | | |
| | 1121 | 15 | | " | | |

| | | | | | |
|---|---|---|---|---|---|
| | 1101 | 2 | | 4 50 | 5% |
| | 1101[2] | 12 | | 4 25 | " |
| 412 | 1102 | 11 3/12 | | 4 25 | 5% |
| | 1103 | 14 9/12 | | " | " |
| | 1104 | 14 1/12 | | " | " |
| | 1105 | 8 1/2 | | " | " |
| | 1105 | 15 | | 4 50 | " |
| | 1106 | 1 | | 5 00 | " |
| | 1107 | 3 | | " | " |
| | 1107 | 1 | | 4 25 | " |
| | 1108 | 7 | | " | " |
| | 1108 | 8 | | 4 50 | " |
| | 1108[2] | 33 1/12 | | " | " |
| | 1109 | 25 | | " | " |
| | 1109 | 10 | | 4 25 | " |
| | 1110 | 10 | | " | " |
| | 1110 | 24 | | 4 50 | " |
| | 1111 | 186 4/12 | | 6 00 | " |
| | | 563 7/12 | | | |

413 Sales by Kibbe, Chaffee, Shreve & Co., commission merchants, 71 & 73 Worth St., New York, of double-pillar nubias for account of Mess. Thomas Dolan & Co.

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | 563 7/12 | | | |
| July 31, | '82. | 1111[2] | 5 | dozens | 6 00 | 5% |
| | | 1111[2] | 5 | | 5 00 | " |
| | | 1111[2] | 26 | | 4 50 | " |
| | | 1112 | 98 1/12 | | 6 00 | " |
| | | 1113 | 47 | | " | " |
| | | 1114 | 29 | | " | " |
| | | 1115 | 22 | | " | " |
| | | 1116 | 13 | | " | " |
| | | 1117 | 20 | | " | " |
| | | 1118 | 30 10/12 | | " | " |
| | | 1119 | 87 3/12 | | " | " |
| | | 1121 | 33 | | " | " |
| | | 1122 | 4 | | " | " |
| Aug't 31, | '82. | 1103 | 1 | | 6 00 | 5% |
| | | 1104 | 1 | | " | " |
| | | 1120 | 7[2] | | " | " |
| Aug't 31, | '82. | 1111 | 104 | | 6 00 | 5% |
| | | 1112 | 74 | | " | " |
| | | 1113 | 39 | | " | " |
| | | 1114 | 32 | | " | " |

Forward.

414 Sales by Kibbe, Chaffee, Shreve & Co., commission merchants, 71 & 73 Worth St., New York, of double-pillar nubias for account of Mess. Thomas Dolan & Co.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | 1,242 3/12 | | | | |
| Aug. 31, | 1882. | 1115 | 29 | dozens | | 6 00 | 5% |
| | | 1116 | 5 9/12 | " | | " | " |
| | | 1117 | 14 | " | | " | " |
| | | 1118 | 39 | " | | " | " |
| | | 1119 | 56 | " | | " | " |
| | | 1121 | 21 | " | | " | " |
| | | 1122 | 30 | " | | " | " |
| Sept. 30, | '82. | 1111 | 1 | " | | 6 00 | 5% |
| Sept. 30, | '82. | 1111 | 118 11/12 | " | | " | " |
| | | 1113 | 55 3/12 | " | | " | " |
| | | 1113 | 63 | " | | " | " |
| | | 1114 | 4 | " | | " | " |
| | | 1115 | 2 | " | | " | " |
| | | 1117 | 8 | " | | " | " |
| | | 1118 | 31 5/12 | " | | " | " |
| | | 1119 | 41 | " | | " | " |
| | | 1121 | 10 | " | | " | " |
| | | 1122 | 10 | " | | " | " |
| Oct. 31, | '82. | 1111 | 113 | " | | 6 00 | 5% |
| | | 1112 | 28 | " | | " | " |
| 415 | | 1113 | 13 3/12 | | | 6 00 | 5% |
| | | 1113 | 6 9/12 | | | 5 75 | " |
| | | 1114 | 1 2/12 | | | 6 00 | " |
| | | 1114 | 3 | | | 5 75 | " |
| | | 1117 | 26 | | | 6 00 | " |
| | | 1119 | 41 | | | 6 00 | " |
| | | 1119 | 5 | | | 6 50 | " |
| | | 1119 | 5 | | | 5 75 | " |
| | | 1121 | 22 | | | 6 00 | " |
| | | 1121 | 5 | | | 5 75 | " |
| | | 1122 | 17 11/12 | | | 6 00 | " |
| Nov. 30, | '82. | 1111 | 90 10/12 | | | 6 00 | 5% |
| | | 1111 | 19 | | | 5 25 | " |
| | | 1111 | 78 1/12 | | | 5 50 | " |
| | | | 2,256 7/12 | | | | |

416 Sales by Kibbe, Chaffee, Shreve & Co., commission merchants, 71 & 73 Worth St., New York, of double-pillar nubias for account of Mess. Thomas Dolan & Co.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | 2,256 7/12 | | | | |
| Nov. 30, | '82. | 1112 | 12 | dozens | | 6 00 | 5% |
| | | 1117 | 1 | " | | 6 00 | " |
| | | 1117 | 2 | " | | 5 25 | " |
| | | 1119 | 42 | " | | 6 00 | " |
| | | 1119 | 9 1/12 | " | | 5 50 | " |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | 1119 | 7 | dozens | 5 | 25 | 5% |
| | | 1121 | $55\frac{2}{12}$ | " | 6 | 00 | " |
| | | 1121 | 6 | " | 5 | 50 | " |
| | | 1121 | 5 | " | 5 | 25 | " |
| Dec. 31, | '82. | 1108[2] | 4 | " | 3 | 00 | 5% |
| | | 1111 | 6 | " | 6 | 00 | " |
| | | 1111 | $123\frac{3}{12}$ | " | 5 | 50 | " |
| | | 1111 | 65 | " | 5 | 25 | " |
| | | 1111 | $140\frac{1}{12}$ | " | 5 | 00 | " |
| | | 1117 | $9\frac{1}{12}$ | " | 5 | 00 | " |
| | | 1118 | $5\frac{3}{12}$ | " | 7 | 00 | " |
| | | 1119 | $13\frac{7}{12}$ | " | 5 | 00 | " |
| Oct. 31, | '83. | 1111 | $5\frac{10}{12}$ | " | 4 | 00 | 5% |
| | | 1111 | 1 | " | 3 | 00 | " |
| 417 | | 1117 | 5 | " | 4 | 00 | " |
| | | 1117 | $5\frac{1}{12}$ | " | 3 | 50 | " |
| | | 1119 | 4 | " | | " | " |
| | | | 2,783 | | | | |

(Endorsed:) Jennings *vs.* Kibbe *et al.* For identification. Def'ts' account. Produced Feb'y 25, '85. T. G., master. (File-mark:) U. S. circuit court. Filed Jan. 28, 1886. Timothy Griffith, clerk.

418 "For identification. April 7, '85. T. G., master."

PHILADELPHIA, ——, 188–.

Consigned Messrs. Kibbe, Chaffee, Shreve & Co. by Thomas Dolan & Co.

1881.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Oct. | 31. | $\frac{1}{2}$ | doz. | 1101 | Br't forw'd, | | $312\frac{2}{12}$ | | | |
| | | $\frac{1}{2}$ | " | 1103 | May | 11. | 2 | doz. | 1111 | |
| | | $1\frac{1}{2}$ | " | 1102 | | | 1 | " | 1121 | |
| Nov. | 1. | $2\frac{1}{2}$ | " | 1103 | | 12. | $7\frac{1}{2}$ | " | 1120 | |
| | | $2\frac{1}{2}$ | " | 1105 | | | 1 | " | 1119 | |
| | | $2\frac{1}{2}$ | " | 1104 | | | 12 | " | 1111 | |
| | | 1 | " | 1106 | | 13. | 48 | " | 1111 | |
| | | 1 | " | 1107 | | 15. | 36 | " | 1111 | |
| | 7. | 3 | " | 1107 | | 18. | 12 | " | 1118 | |
| | | 5 | " | 1106 | | | 12 | " | 1119 | |
| | 8. | 1 | " | 1106 | | 19. | 18 | " | 1111 | |
| | 29. | 6 | " | 1108 | | | 6 | " | 1118 | |
| Dec. | 1. | 6 | " | 1108 | | 20. | 12 | " | 1117 | |
| | | 4 | " | 1109 | | | 12 | " | 1112 | |
| | 7. | 4 | " | 1110 | | | 12 | " | 1113 | |
| | 8. | 1 | " | 1110 | | | 12 | " | 1115 | |
| | 10. | 18 | " | 1110 | | | 144 | " | 1111 | |
| | 14. | 10 | " | 1109 | | 22. | 12 | " | 1112 | |

419

1882.

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Jan'y | 6. | 1 | doz. | 1101 | | | 12 | doz. | 1114 |
| | 23. | 20 | " | 1105 | | 23. | 1 | " | 1112 |
| | | 11 | " | 1110 | | 24. | 24 | " | 1112 |
| | | ½ | " | 1101 | | | 48 | " | 1111 |
| | | 11 | " | $1101^2$ | | 25. | 12 | " | 1118 |
| | | 38 | " | $1108^2$ | | | 12 | " | 1112 |
| | | 10 | " | 1102 | | 26. | 12 | " | 1118 |
| | | 2 | " | 1107 | | | 12 | " | 1111 |
| | | 1 | " | 1106 | | | 1 | " | $1101^2$ |
| | | 3 | " | 1108 | | | 1 | " | 1103 |
| | | 18 | " | 1109 | | | 2 | " | 1104 |
| | | 14 | " | 1103 | | | 7/12 | " | 1105 |
| | | 13 | " | 1104 | | | 1 | " | 1107 |
| Apr. | 24. | 7 | " | 1111 | | 27. | 12 | " | 1114 |
| | 28. | 1 | " | 1111 | | | 12 | " | 1116 |
| | | 1 | " | 1112 | | | 12 | " | 1119 |
| | | 1 | " | 1113 | | 30. | 4 | " | 1112 |
| May | 1. | 10 | " | 1111 | | | 2 | " | 1113 |
| | | 1 | " | 1114 | | | 4 | " | 1119 |
| | | 1 | " | 1116 | | | 2 | " | 1121 |
| | 2. | ½ | " | 1115 | | 31. | 12 | " | 1117 |
| | | 2/12 | " | 1117 | | | 12 | " | 1121 |
| | | ½ | " | 1118 | June | 1. | 12 | " | 1119 |
| | 3. | 60 | " | 1111 | | | 8/12 | " | 1111 |
| | | 1 | " | 1114 | | 2. | 12 | " | 1113 |
| | | ½ | " | 1115 | | 5. | 12 | " | 1113 |
| | | 1 | " | 1117 | | 6. | 12 | " | 1113 |
| | | | | | | | 7 | " | 1111 |
| | 4. | 1 | " | 1118 | | 8. | 120 | " | 1111 |
| | | 1 | " | 1119 | | | 12 | " | 1119 |
| | 10. | 12 | " | 1111 | | 9. | 12 | " | 1116 |
| Forw'd | | $312\frac{2}{12}$ | | | Forw'd | | $1,081\frac{1}{12}$ | | |

420

1882.

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Br't forw'd, | | $1,081\frac{1}{12}$ | | | Br't forw'd, | | $1,802\frac{11}{12}$ | doz. | 1119 |
| June | 9. | 24 | doz. | 1119 | July | 25. | 25 | " | 1112 |
| | 10. | 12 | " | 1112 | | 26. | 24 | " | 1112 |
| | 12. | 5 | " | 1111 | | | 12 | " | 1119 |
| | 13. | 2 | " | 1112 | | | 8 | " | 1121 |
| | 15. | 73 | " | 1111 | | | 6 | " | 1111 |
| | | 7 | " | 1116 | | | 2 | " | 1114 |
| | | 4 | " | 1114 | | | 1 | " | 1115 |
| | | 12 | " | 1112 | | | 6 | " | 1117 |
| | | 24 | " | 1113 | | | 1 | " | 1118 |
| | | 2 | " | 1115 | | 29. | 24 | " | 1112 |
| | | 2 | " | 1121 | | | 12 | " | 1117 |
| | | 12 | " | 1117 | | | 36 | " | 1119 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | 12 | doz. | 1118 | | | 31. | 144 | doz. | 1111 |
| | | 12 | " | 1119 | | | | 21 | " | 1113 |
| | | 8 | " | 1121 | | | | 3 | " | 1117 |
| | 24. | 46 | " | 1112 | | | | 12 | " | 1119 |
| | | 26 | " | 1119 | Aug. | | 2. | 52 | " | 1111 |
| | 27. | 2 | " | 1112 | | | | 3 | " | 1121 |
| | 28. | 12 | " | 1111 | | | | 24 | " | 1119 |
| | 29. | 1 | " | 1121 | | | 3. | 24 | " | 1111 |
| July | 1. | 12 | " | 1114 | | | 4. | 12 | " | 1122 |
| | 5. | 36 | " | 1111 | | | 5. | 9 | " | 1111 |
| | | 12 | " | 1119 | | | | 3 | " | 1112 |
| | | 4 | " | 1122 | | | | 10 | " | 1113 |
| | 10. | 12 | " | 1114 | | | | 2 | " | 1117 |
| | | 12 | " | 1111 | | | | 32 | " | 1119 |
| | | 12 | " | 1121 | | | | 16 | " | 1121 |
| 421 | | | | | | | | | | |
| | 12. | 12 | doz. | 1117 | | | | 9 | doz. | 1122 |
| | 13. | 12 | " | 1118 | | | | 3 | " | 1109 |
| | | 12 | " | 1111 | Aug. | | 7. | 12 | " | 1122 |
| | 14. | 24 | " | 1113 | | | 8. | 22 | " | 1113 |
| | | 5 | " | 1121 | | | | 2 | " | 1117 |
| | | 31 | " | 1111[2] | | | | 12 | " | 1121 |
| | 17. | 12 | " | 1111 | | | 9. | 12 | " | 1121 |
| | | 12 | " | 1114 | | | | 12 | " | 1122 |
| | | 12 | " | 1117 | | | 10. | 12 | " | 1121 |
| | 20. | 4 | " | 1117 | | | | 12 | " | 1122 |
| | | 8 | " | 1111 | | | 11. | 12 | " | 1119 |
| | | 24 | " | 1114 | | | | 24 | " | 1115 |
| | | 43 | " | 1112 | | | | 12 | " | 1121 |
| | | 17 | " | 1118 | | | 15. | 11 | " | 1113 |
| | 24. | 10 | " | 1111 | | | | 1 | " | 1122 |
| | | 2 | " | 1118 | | | | 11 | " | 1119 |
| | | 9 | " | 1113 | | | | 25 | " | 1121 |
| | | 3 | " | 1114 | | | 16. | 12 | " | 1118 |
| | | 36 | " | 1112 | | | | 36 | " | 1119 |
| | 25. | 24 | " | 1112 | | | | 12 | " | 1121 |
| | | 11 | " | 1113 | | | | 12 | " | 1115 |
| Forw'd | | 1,802 11/12 | | | | Forw'd | | 2,602 11/12 | | |

422

1882.

| | | | | | |
|---|---|---|---|---|---|
| Br't forw'd, | | 2,602 11/12 | | | |
| Aug. | 18. | 10 | doz. | 1118 | |
| | | 1 | " | 1119 | |
| | 22. | 11 | " | 1111 | |
| | | 12 | " | 1121 | |
| | | 1 | " | 1115 | |
| | 23. | 12 | " | 1111 | |
| | 25. | 12 | " | 1111 | |
| | 28. | 5 | " | 1121 | |

| | | | | |
|---|---|---|---|---|
| | | 5 | doz. | 1111[2] |
| | | 4 | " | 1119 |
| | | 3 | " | 1111 |
| | | 1 | " | 1113 |
| | | 1 | " | 1118 |
| | | 3 | " | 1112 |
| | | 2 | " | 1111 |
| | 29. | 7 | " | 1111 |
| Sept. | 1. | 12 | " | 1111 |
| | 4. | 24 | " | 1111 |
| | 6. | 17 | " | 1111 |
| | 9. | 4 | " | 1111 |
| | 12. | 12 | " | 1111 |
| | 16. | $17\frac{10}{12}$ | " | 1111 |

$2,785\frac{9}{12}$ doz.
$2\frac{9}{12}$ short & given away.

2,783

423 Consigned Mess. Colladay, Trout & Co., Philada.

1882.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | Apr. | 28. | 7 | doz. 1111 |
| | | | | May | 5. | 9 | " 1111 |
| | | | | | | 1 | " 1114 |
| | | | | | 6. | 1 | " 1112 |
| | | | | | | 1 | " 1113 |
| | | | | | | 1 | " 1115 |
| | | | | | 11. | 1 | " 1117 |
| | | | | | | 1 | " 1118 |
| | | | | | 13. | 1 | " 1111 |
| | | | | | | 1 | " 1119 |
| | | | | | | 1 | " 1121 |
| | | | | June | 15. | 94 | " 1111 |
| | | | | | | 8 | " 1112 |
| | | | | | | 10 | " 1113 |
| | | | | | | 3 | " 1117 |
| | | | | | | 12 | " 1119 |
| | | Returned— | | | | 5 | " 1121 |
| July | 25. | 1112 | $27\frac{11}{12}$ doz. | | 23. | 12 | " 1112 |
| | | 1113 | 11 " | | | 12 | " 1119 |
| | | 1114 | 1 " | July | 1. | 70 | " 1111 |
| | | 1117 | 1 " | | | 8 | " 1112 |
| | | 1119 | $12\frac{11}{12}$ " | | | 2 | " 1119 |
| | | 1121 | $\frac{11}{12}$ " | | 10. | 22 | " 1111 |
| | | 1118 | $\frac{11}{12}$ " | | 13. | 2 | " 1117 |
| | | 1115 | 1 " | | | 5 | " 1121 |
| | | 1111 | 3 | | | | |
| | | | 290 doz. | | | 290 doz. | |
| July | 31. | 1111 | $189\frac{11}{12}$ " = $249\frac{7}{12}$ " | | | | |

$40\frac{5}{12}$

424 Thomas Dolan & Company, manufacturers of worsted coatings, woolens, &c.

PHILADELPHIA, *Mar.* 21, 1885.

John R. Bennett, Esq.

DEAR SIR: We herewith enclose statement of consignments to—

| | |
|---|---|
| Kibbe, Chaffee, S. & Co. of | 2,785 9/12 doz. |
| Colladay, Trout & Co. | 40 5/12 " |
| Total | 2,826 2/12 |

which we trust will be found satisfactory.

Yours truly, THOMAS DOLAN & CO.

P. S.—You will notice on statement of Colladay, Trout & Co. that 249 7/12 doz. were returned, as they had but a limited sale. These were brought back to the mill and subsequently sent to Kibbe, C., S. & Co.

(Endorsed:) Jennings *vs.* Kibbe & *al.* (File-mark:) U. S. circuit court. Filed Jan. 28, 1886. Timothy Griffith, clerk.

425 NEW YORK, *Sept.* 29, 1885—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Mr. A. G. JENNINGS, being called and duly sworn, deposes as follows:

I am one of the complainants in this suit. I licensed others to make the patented lace purling which is described in the patent 218,032. The licenses were in writing. I produce one of them.

Witness produces a license dated August 24, 1880, between A. G. Jennings and W. P. Jennings, licensors, and Wm. Marriott and Hery Crine, licensees.

It is stipulated that a copy of the agreement may take the place of the original. Counsel for complainants offers the said agreement in evidence.

Marked Compl'ts' Exh. Agreement, of this date.

Witness continues:

The royalty of 50 cents per dozen nubias called for in the agreement with Marriott has been paid by him on each kind of nubias—double pillar and single pillar—made by him under that license. I also granted licenses to other persons under the patent in question, French & Ward, of Massachusetts; Conyers Button & Co., of Pa. They also paid me a royalty which was intended to average 50 cents per dozen nubias. They paid by the pound; they paid 10 cents per pound, and the nubias averaged from 3½ to 6 pounds in weight per dozen. I believe my royalty actually amounted to 50 cents per dozen nubias under these agreements.

A. G. JENNINGS.

426 Sworn to, by consent, before Mr. Sonneborn, notary public,
GEORGE H. SONNEBORN,
*Notary Public, N. Y. Co.*

Adjourned to October 8, 1885, at 1 p. m.

NEW YORK, *Nov.* 23, 1885—2 p. m.

Met pursuant to agreement.
Present: Counsel for the respective parties as before.

Defendants here open their proof.

It is agreed by and between counsel for the respective parties that the nubias accounted for by the defendants Kibbe, Chaffee, Shreve & Co. were manufactured by Thomas Dolan and are contained in the statement produced on behalf of Mr. Dolan in the suit against him on the 7th of April, 1885.

Defendant's counsel offers in evidence a certified copy of the interlocutory decree entered in the case of these complainants *vs.* Thomas Dolan the 17th day of October, 1882.

Also a certified copy of the report of the master filed in the said cause January 19th, 1883.

Also a certified copy of the final decree entered in said cause April 17, 1883.

Also a certified copy of the interlocutory decree entered in the case of these complainants *vs.* Kibbe, Chaffee, Shreve & Co. the — day of February, 1882.

Also a certified copy of the report of the master filed in the said cause October 6, 1882.

Also a certified copy of the final decree entered in said cause December 8, 1882.

427 DEFENDANTS' EXHIBITS.

*Interlocutory Decree Against Thomas Dolan, Dated Oct.* 17, 1882.

At a stated term of the United States circuit court held in and for the southern district of New York, at the circuit court rooms, in New York city, on the 17th day of October, 1882.

Present: Hon. William J. Wallace, circuit judge.

| | |
|---|---|
| ABRAHAM G. JENNINGS and WARREN P. JENNINGS *against* THOMAS DOLAN. | In Equity. Docket No. 1996. |

This cause having come on for final hearing at this October term of the circuit court upon the bill of complaint, the answer of the defendant, and the filed papers and exhibits, and the testimony taken on the part of the complainants therein, now, after hearing A. v. Briesen, Esq., of counsel for complainants, and John R. Bennett, Esq., of counsel for defendant, and due deliberation had, and on motion of Briesen & Betts, complainants' solicitors, it is hereby—

Ordered, adjudged, and decreed that the design letters patent of

the United States issued to Abraham G. Jennings on the first day of January, 1878, as No. 10388, for a new and original design for lace purling, and the design letters patent of the United States issued to Warren P. Jennings on the 12th day of February, 1878, as No. 10448, for a new and original design for fringed lace fabric, are good and valid in law; that the complainants herein are entitled to the exclusive rights in, to, and under said two design letters
428 patent and in and to the inventions and designs secured thereby; that the defendant, Thomas Dolan, has infringed upon the claims of said two designs letters patent and upon the exclusive rights of the complainants thereunder.

And it is further ordered, adjudged, and decreed that the complainants do recover from the defendant, Thomas Dolan, the profits, gains, and advantages which the said defendant has derived, received, or made by reason of the infringement of the complainant's exclusive rights under said two design letters patent by any manufacture, use, or sale of lace fabrics containing said inventions and designs or either of them, and that the said complainants do also recover any and all damages they have sustained by reason of any infringement of their exclusive rights under said two design letters patent or either of them by the said defendant; and it is hereby, on consent of counsel for the respective parties, referred to Joseph M. Deuel, Esquire, one of the masters of this court, to ascertain, take, and report the quantity of lace fabrics made and the quantity sold by said defendant, Thomas Dolan, in violation of said two design letters patent or either of them, and the quantity of such lace fabrics which said defendant has on hand, and the gains, profits, and advantages derived by said defendant from and through said infringements, and to assess the damages suffered by the complainants by reason of said infringements and to report thereon with all convenient speed.

And the defendant, Thomas Dolan, is hereby directed and required to attend before said master from time to time, as required, and to produce before him such books, papers, exhibits, statements, vouchers, and documents as he may be directed by said master to produce, and to submit to such oral or other examination as the master may direct.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued out of and under the seal of this court enjoining and restraining the defendant, Thomas Dolan, and his servants, agents, attorneys, representatives, and workmen from directly
429 or indirectly making or causing to be made, constructing or causing to be constructed, using or causing to be used, vending or causing to be sold, delivering or causing to be delivered, working or causing to be worked, or putting into practice, operation (or use), or in anywise counterfeiting or using or imitating the said inventions and designs or either of them, or any part or parts thereof, or any lace fabrics made in accordance therewith or like or similar to those which the said defendant, Thomas Dolan, has heretofore made, used, or sold containing or embodying the inventions or de-

signs described and claimed in said two design letters patents No. 10388 and No. 10448 or either of them in any way whatsoever.

And it is further ordered, adjudged, and decreed that the complainants do recover of the defendant, Thomas Dolan, the costs of this suit, to be taxed, and that the question of increase of damages and all further questions be reserved until the coming in of the master's report.

WM. J. WALLACE.

Consented that Joseph M. Deuel be appointed as master.
10, 19, '82.

JOHN R. BENNETT, *Proc. Def't.*
BRIESEN & BETTS,
*Comp'ts' Sol'rs.*

430 *Master's Report—Dolan.*

United States Circuit Court, Southern District of New York. In Equity.

A. G. JENNINGS *et al.*
*against*
THOMAS DOLAN.

I have attended to the duties assigned to me by the decree made and entered herein on the 19th day of October, A. D. 1882, in the discharge of which I have been attended by Mr. A. v. Briesen, of counsel for complainants, and by Mr. John R. Bennett, of counsel for defendant.

I find and report from the evidence taken before me that the defendants manufactured and disposed of four thousand two hundred ninety-five and $\frac{9}{12}$ dozen ($4{,}295\frac{9}{12}$) purl lace nubias which infringed complainants' patent.

I further find and report that of the number so found as above twenty-two hundred and eighty-one and $\frac{5}{12}$ dozen ($2{,}281\frac{5}{12}$) were consigned to and sold by Kibbe, Chaffee, Shreve & Co., of New York city, against whom and in a suit in this court entitled A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* complainants have obtained a decree for eleven hundred and fifty-four dollars and sixty-two cents, such damage having been measured by the complainants' license fee of fifty cents per dozen.

I further find and report that by stipulation of counsel damages are to be assessed in this case for the whole amount of nubias manufactured and sold by the defendant, and a decree entered therefor,

431 and that if at any time prior to the satisfaction of said decree the decree against Kibbe *et al.* is paid and satisfied in whole or in part as to such damages, the amount so paid shall be considered as credited upon and be deducted from the decree in this cause for the corresponding number of nubias covered by such payment.

I further find and report that complainant has an established li-

cense fee of fifty cents per dozen for the nubias made and sold as aforesaid, which must be the measure of damages herein.

I find as conclusion of law that the complainants are entitled to recover fifty cents per dozen upon the amount manufactured and sold as aforesaid, amounting to the sum of two thousand one hundred and fifty-seven dollars and eighty-eight cents, with interest to the date of this report, amounting to one hundred and fifty-six dollars and seven cents, and amounting in the aggregate to the sum of two thousand three hundred and three dollars and nine-five cents.

All of which is respectfully submitted.

J. M. DEUEL, *Master.*

Dated New York, January 19th, 1883.

432 *Master's Report—Kibbe.*

U. S. Circuit Court, Southern District of New York. In Equity.

A. G. JENNINGS *et al.*
*against*
HENRY R. KIBBE *et al.*

To the court:

Under the order of the court made and entered herein on the 24th day of February, A. D. 1882, this cause was referred to me to ascertain, take, and report the quantity of fabrics made and the quantity sold by the defendant, and the quantity of such fabrics which said defendants have on hand, and the gains, profits, and advantages derived by said defendant, and to assess the damages suffered by the complainants by reason of the infringement complained of.

In discharging the duties thus assigned to me a number of sessions were had, at which the complainants were represented by Mr. John A. v. Briesen, of counsel, and the defendants by Mr. John R. Bennett, of counsel.

From the statements filed by the defendants and the evidence taken I find as matter of fact:

I.

That the defendants have not made fabrics infringing complainants' letters patent.

II.

That defendants received on consignment from Thomas
433 Dolan & Co., of Philadelphia, Pa., twenty-seven hundred and seven dozen of the said purl lace nubias which infringed complainants' patent, and that they sold twenty-two hundred and eighty-one $\frac{5}{12}$ dozen and returned to said Thomas Dolan & Co. four hundred and twenty-five and $\frac{7}{12}$ dozen, and therefore said defendants had no fabrics on hand which infringed said letters patent.

III.

I further find and report that complainants had an established

license fee of sixty cents for each dozen of said fabrics, less a discount of ten cents on each dozen, to wit, fifty cents on each dozen so sold by defendants.

IV.

I find as conclusion of law that the complainants are entitled to fifty cents upon each dozen of said purl lace nubias sold as aforesaid by the defendants, amounting to the sum of eleven hundred and four dollars and twenty cents, with interest thereon to the date of this report, amounting to fifty dollars and forty-two cents, and amounting in the aggregate to eleven hundred fifty-four dollars and sixty-two cents.

All of which is respectfully submitted.

JOSEPH M. DEUEL, *Master.*

N. Y., Oct. 5th, 1882.

434 *Marriott & Crine License.*

Whereas Abraham G. Jennings and Warren P. Jennings, of Brooklyn, Kings county, New York, parties of the first part, are the owners of the following-mentioned letters patent of the United States, viz:

Design letters patent No. 10388, granted January 1st, 1878, for lace purling, and

Design letters patent No. 10448, granted February 12th, 1878, for fringed lace fabrics, and

Letters patent No. 218,032 for an improvement in lace purling, granted July 29th, 1879;

And whereas Mr. William Marriótt, of Stoughton, Mass., and Henry Crine, of Boston, Mass., parties of the second part, are desirous of acquiring the right to make and sell certain kinds of nubias and scarfs of purl-lace fabrics under said three letters patent:

Now, therefore, this agreement witnesseth that, for and in consideration of the covenants hereinafter contained, to be well, truly, and faithfully kept and performed by the parties of the second part, the parties of the first part have granted, and hereby do grant, unto the parties of the second part the right and privilege to make under said three letters patent and during the terms thereof nubias and scarfs of purl-lace fabrics of the single and double pillar threads, fringed on the ends only, and none other, and to sell those thus made.

The parties of the first part hereby grant unto the parties of the second part the right to make such goods on warp lace machines, not exceeding three now in use and possession of William Marriott, and in quantity not exceeding eight hundred (800) dozen up to the 1st day of January, 1881, without the written consent of the parties of the first part.

The parties of the second part promise, covenant, and agree as a condition of this license to pay to the parties of the first part as a royalty or patent fee the sum of fifty (50) cents for each and every dozen of such nubias or scarfs made under said three letters patent,

commencing from the 1st day of April, 1880. Payments of
435 royalty are to be made by the parties of the second part to the parties of the first part on the first day of each and every month or within five days thereafter during the continuance of this agreement on the amount or quantity of said patented goods made during the month next proceeding (*sic*) such date of payment.

All payments of royalty are to be accompanied by the sworn statement of the parties of the second part specifying the amount and character of such goods made and sold by them under said three letters patent.

The parties of the second part further promise, covenant, and agree to keep true and correct books of account, in which shall be entered the quantity and character of such goods made and weight of yarn used by the parties of the second part under said three letters patent and the quantity and character of such goods sold.

Such books of account are to be open at all reasonable times to the inspection of the parties of the first part or their duly authorized agent.

All payments of royalty made by the parties of the second part to the parties of the first part under the agreement are to be made at the place of business of the parties of the first part in New York city, New York.

The parties of the second part further promise, covenant, and agree to mark all the goods and the boxes and packages containing such goods so made and sold under said three letters patent "Patented January 1st, 1878, February 12th, 1878, and July 29th, 1879," as required by law.

The parties of the first part, in consideration of the faithful performance of this agreement, further promise, covenant, and agree to release the parties of the second part from all claims for damages against said parties of the second part for past infringements prior or before the 1st day of April, 1880, of the said three letters patent or either of them.

If at any time the parties of the second part shall fail to keep or perform any of the conditions or covenants contained in this
436 agreement, then and in that case this agreement shall immediately become null and void without notice.

But the parties of the second part shall not be relieved thereby from any payments of royalty already due at such time or which may become due at such time or which may become due thereafter to the parties of the first part, or from the performance of any other acts under this agreement which should have been done before such time.

In testimony whereof the parties hereto have hereunto set their hands and affixed their seals this the 24th day of August, 1880.

A. G. JENNINGS.
WARREN P. JENNINGS.
WM. MARRIOTT.
HENRY CRINE.

In presence of—
THOS. STRINGER.
In presence of—
——— ———.

437 *Conyers Button License.*

Whereas Abraham G. Jennings and Warren P. Jennings, of Brooklyn, Kings county, New York, parties of the first part, are the owners of the following-mentioned letters patent of the United States, viz:

Design letters patent No. 10388, granted January 1st, 1878, for lace purling, and design letters patent No. 10448, granted February 12, 1878, for fringed lace fabrics, and letters patent No. 218,032, granted July 29, 1879, for an improvement in lace purling;

And whereas Conyers Button & Co., of Germantown, Philadelphia, Pa., parties of the second part, are desirous of acquiring the right to make and sell certain kinds of nubias, scarfs, shawls, and other articles of purl lace fabrics under said three letters patent;

And whereas the parties of the second part did enter into and make an agreement with the parties of the first part, bearing date October 14, 1879, to manufacture nubias under the first two named design patents Nos. 10388 and 10448: Now, therefore, this further agreement in confirmation, enlargement, and amendment of the one of October, 1879, in its rights and privileges, and in place of it in its terms of royalty to be paid, witnesseth:

That, for and in consideration of the covenants hereinafter *continued*, to be well and truly and faithfully kept and performed by the parties of the second part, the parties of the first part have granted and hereby do grant unto the parties of the second part the right and privileges to make under said three letters patent and during the terms thereof nubias, scarfs, shawls, and other articles of purl lace fabrics of the single or double pillar thread, fringed or otherwise, of cotton, wool, worsted, and of silk not to exceed one-half of the fabric woven or knitted—that is to say, alternate threads of wool, worsted, or silk—and to sell the same.

The parties of the first part hereby grant unto the parties of the second part the right to make such goods on the double-ribbed
438 machines or the warp machines or otherwise, as the said parties of the second part may elect.

The parties of the second part promise, covenant, and agree as a condition of this license to pay to the parties of the first part as a royalty or patent fee the sum of twelve and a half (12½) cents per pound on all such articles made of either cotton, wool, or worsted and fourteen (14) cents per pound on all such articles partly made of silk and made by them under said three letters patent or either of them, dating and commencing from the first day of January, 1880.

True and correct returns of the quantities and weights of goods made by the parties of the second part are to be made to the parties of the first part on or before the 10th day of each and every month during the continuance of this agreement, and payment for the same to be made at the expiration of two (2) months from the date of each return, with a rebate of two and a half (2½) cents per pound after January 1st, 1880, to be accompanied by the statement of the parties of the second part, verified by their chief book-keeper, speci-

fying the quantities and average weight per dozen of each class of goods made by them under said three letters patent or either of them. The parties of the second part further promise, covenant, and agree to keep true and correct books of account, in which shall be entered the quantities and character of such goods made by the parties of the second part and the weight thereof under said three letters patent and the quantity and character of such goods sold. Such books of account are to be open at all reasonable times to the inspection of the parties of the parties of the first part or their duly authorized agent.

All payments of royalty made by the parties of the second part to the parties of the first part under this agreement are to be made at the place of business of the parties of the first part in New York city, New York.

The parties of the second part further promise, covenant, and agree to mark all the boxes or cartons containing such goods so
439 made and sold under said three letters patent "patented January 1, 1878, February 12, 1878, July 29, 1879," as required by law.

The parties of the first part, in consideration of the faithful performance of this agreement, further promise, covenant, and agree to release the parties of the second part and their agents from all claims for damages against them for past infringements of the said three letters patent or either of them previous to January 1, 1880.

The parties of the first part hereby covenant and agree that in case they license any other party or parties on any less payment per dozen or per pound or on any more favorable terms than herein contained, then and in that case the parties of the second part shall be entitled to as small a payment as royalty and as favorable terms as any so licensed.

If at any time the parties of the second part shall fail to keep or perform any of the conditions or covenants contained in this agreement, then and in that case, reasonable notice being given by the party of the first part, unless complied with, this agreement shall, at the option of the party of the first part, become null and void; but the parties of the second part shall not be relieved thereby from any payments of royalty already due at such time or which may become due thereafter to the parties of the first part or from the performance of any other acts under this agreement which should have been done before such time.

In testimony whereof the parties have hereunto set their hands and affixed their seals this 25th day of May, 1880.

A. G. JENNINGS. [SEAL.]
WARREN P. JENNINGS. [SEAL.]
CONYERS BUTTON & CO. [SEAL.]

In presence of—
THOS. STRINGER.
M. L. FINCKEL.

440 Compl'ts' counsel objects to the reception of said exhibits and each of them on the ground that the proceedings in said

prior suits, which were decided in 1882, related to two design patents, to wit, Nos. 10388 and No. 10448, while the present suits relate to an entirely different patent, to wit, mechanical patent No. 218,032, and as, therefore, immaterial and incompetent.

Def'ts' counsel states that the foregoing papers are offered in evidence for the purpose of showing the value of patents Nos. 10388 and 10448 placed thereon by the compl'ts in the license offered by them in evidence September 29th, 1885.

Objection continued, and as no foundation has been laid—

Def'ts' counsel offers in evidence a copy of a license issued
441 by the compl'ts herein to Conyers Button & Co., of Philadelphia, Oct. 14, 1879.

Compl'ts' counsel admits the genuineness of the license, the correctness of the copy, and that the royalty therein stated was paid to compl'ts, but objects to the introduction of the same as incompetent and without foundation.

Defendants rest.

NOVEMBER 30TH, 1885.

Present: A. v. Briesen, for compl'ts; Jno. R. Bennett, for def'ts.

Heard counsel on final argument.

442 U. S. Circuit Court, Southern District of New York.

A. G. & W. P. JENNINGS
*against*
KIBBE, CHAFFEE, SHREVE & Co. } In Equity.

To the judges of the circuit court of the United States for the southern district of New York:

Pursuant to an order of the court dated January 19th, 1885, whereby, among other things, it was referred to the undersigned as master to ascertain, take, and state the number of lace fabrics made, used, and sold by these defendants or which they have on hand in infringement of the claims of letters patent No. 218,032 and the gains, profits, savings, and advantages derived by said defendants from and through said infringements and to assess and report the damages thereby suffered by the complainants, I, Timothy Griffith, the master mentioned in said order, hereby report—

That I have been attended by A. v. Briesen, Esq., of counsel for the complainants, and by John R. Bennett, Esq., of counsel for the defendants, and that I have taken and carefully considered all the evidence adduced before me; that from such evidence I find and report that the defendants have sold $2,785\frac{9}{12}$ dozen of lace fabrics called "nubias" in infringement of the claims of the complainants'
letters patent No. 218,032; that such patent, by a special claim,
443 covers the fringe of the infringing lace fabric or nubias made with the double pillar, and by another special claim covers the body of the double-pillar fabric.

I further find and report that complainants have an established license fee of fifty cents per dozen lace fabrics or nubias, so called,

manufactured under said letters patent No. 218,032, with fringe at the ends only.

I find as conclusion of law that the complainants are entitled to recover fifty cents per dozen upon the amount sold as aforesaid, amounting to the sum of one thousand three hundred and ninety-two $\frac{88}{100}$ dollars ($1,392.88), and said sum is hereby assessed as the amount due the complainants as damages herein, together with interest thereon.

All of which is respectfully submitted, together with the evidence taken before me.

Dated January 5th, 1886.

Counsel for the respective parties were notified, and on the 9th day of January, 1886, appeared before me, and the counsel for the defendants filed his objections, hereto annexed, to my draft report; which objections, upon careful consideration, I overrule and sign the foregoing as my final report.

Dated January 28th, 1886.

(Signed) TIMOTHY GRIFFITH, *Master*.

(Endorsed:) Circuit court of the United States, southern district of New York. Jennings *vs.* Kibbe & *al.* Master's report. (Filemark:) U. S. circuit court. Filed Jan. 28, 1886. Timothy Griffith, clerk.

444 In the Circuit Court of the United States in and for the Southern District of New York. In Equity.

A. G. & W. P. JENNINGS *against* KIBBE, CHAFFEE, SHREVE & Co. } On Exception to the Report of the Master.

To the honorable the judges of the circuit court of the United States in and for the southern district of New York:

And now comes the defendant in the above-entitled cause, by John R. Bennett, his solicitor and counsel, and takes exception to the report of the master filed herein January 28th, 1866.

1st. For that the master has found and reported "that the defendants have sold 2,785$\frac{9}{12}$ dozen of lace fabrics called nubias in infringement of the claims of complainants' letters patent No. 218,032," without finding, as was admitted by the complainants on the accounting and reporting, that the said 2,785$\frac{9}{12}$ dozen of nubias were manufactured by Thomas Dolan, against whom a cause was pending, brought by the same complainants for infringement of said letters patent, and in which an accounting had been ordered; that said nubias were furnished to the defendants by the said Dolan and were included in the account filed by the said Dolan on
445 the accounting in the cause pending against him, and that the master had included the said 2,785$\frac{9}{12}$ dozen of nubias in his findings and report filed therein.

2d. For that the said master has found and reported: "I further

find and report that complainants have an established license fee of 50 cts. per dozen lace fabrics or nubias, so called, manufactured under said letters patent No. 218,032, with fringe on the end only."

3d. For that the said master has found: "I find as conclusion of law that the complainants are entitled to recover 50 cts. per dozen upon the amount sold as aforesaid, amounting to the sum of one thousand three hundred and ninety-two $\frac{88}{100}$ ($1,392.88) dollars, and said sum is hereby assessed as the amount due the complainants as damages herein, together with interest."

4th. For that the said master has neglected and refused to find that the nubias accounted for by the defendants Kibbe, Chaffee, Shreve & Co. were manufactured by Thomas Dolan and were contained in the statement furnished by the said Dolan in the cause of these complainants against the said Dolan pending an accounting before the master, and that the master therein had found and reported a license fee of fifty cents (50 cts.) per dozen upon the said $2,785\frac{9}{12}$ dozen of nubias, and that as a conclusion of law the complainants were not entitled to a double recovery upon the said $2,785\frac{9}{12}$ dozen nubias sold by these defendants.

Whereas the said master should have found and reported:

1st. That it appearing of record by admission of counsel that the nubias sold by the defendants and included in this accounting were manufactured by Thomas Dolan, and were included in the account filed by the said Dolan on the accounting before the master
446 in the cause of these complainants against the said Dolan, and were included in the report of the master filed therein, as a conclusion of law the complainants are not entitled to a further recovery of a license fee of 50 cts. per dozen upon the same $2,785\frac{9}{12}$ dozen of nubias sold by the defendants.

2d. That the complainants had no established license fee under the said letters patent No. 218,032, either for the whole or any part thereof.

3d. That as a conclusion of law the complainants are entitled to recover from the defendants herein nominal damages only.

Wherefore the defendants except to the said report of the master and pray the judgment of this honorable court thereon.

New York, Feb. 27th, 1886.

(Endorsed:) U. S. circuit court, southern district of New York. In equity. A. G. & W. P. Jennings *vs.* Kibbe, Chaffee, Shreve & Company. Exceptions to master's report. John R. Bennett, counsel for def'ts, 237 B'dway, N. Y. city. Exceptions to master's report. (File-mark:) U. S. circuit court. Filed Mar. 1, 1886. Timothy Griffith, clerk.

447 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the second day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

Present: The Honorable Hoyt H. Wheeler, judge.

ABRAHAM G. JENNINGS & *al.*
*vs.*
HENRY R. KIBBE & *al.*

SAME
*vs.*
THOMAS DOLAN.

The above causes coming on for argument upon exceptions filed to the master's report—

Mr. A. v. Briesen is heard in behalf of complainants and in favor of confirmation of report.

Mr. John R. Bennett is heard in behalf of defendants and in support of exceptions.

C. A. V.

448 Circuit Court of the United States, Southern District of New York.

ABRAHAM G. JENNINGS & *al.*
*vs.*
HENRY R. KIBBE & *als.*

SAME
*vs.*
THOMAS DOLAN.

WHEELER, *J.*:

The master has reported that the defendant Dolan has made and sold 3,075$\frac{9}{12}$ dozen nubias in infringement of the plaintiffs' patent No. 218,032, and that the defendants in the other of these cases have sold 2,785$\frac{9}{12}$ dozen in like infringement, and that the plaintiffs have an established license fee of 50 cents per dozen nubias manufactured under that patent. It is conceded that those sold by the defendants in the latter case were sold for the defendant in the former and are included in those reported as made and sold by him. The defendants in both cases except to the finding of the master that
449 there was an established license fee and object to a decree for anything beyond a merely nominal sum in the latter case. The master submitted a draft report to the counsel for the respective parties, and defendants' counsel deferred his objections and made no further question to the master. The plaintiffs insist that he thereby waived all ground of exception to the report; but this exception is to a principal finding upon all the evidence in the case, about which nothing could be done before the master except to request him to change his finding. The defendants were under no obligation to make that request after he had announced his conclusion upon that point, but could raise the question before the court as to whether the finding was warranted by the proofs by filing his exception in court according to the rules of the court. Hatch *v.* Railroad Co., 9 Fed. Rep., 856. The exceptions to that finding raise that question. There was evidence, however, tending to show that the plaintiffs had established that license fee under this patent for such nubias as Dolan made in-

fringing upon it. The weight of the evidence was for the
450 master, and his conclusion upon it should not be disturbed, unless he has gone contrary to it. It was not contradicted in this respect, and his conclusion appears to be well warranted by it. The master does not report any profits made by the defendants, but damages suffered by the plaintiffs in consequence of the infringement. The established license fee is resorted to as a measure of such damages. All the defendants in both cases participated in the tort constituting the infringement, so far as Dolan made and the others sold the same infringing articles. Such torts are both joint and several, and those who commit them are liable jointly or severally. There may be several judgments, but only one satisfaction. Lovejoy *v.* Murray, 3 Wall, 1; Birdsell *v.* Shaliol, 112 U. S., 485; 5 Sup. Ct. Rep., 244. The plaintiffs are therefore entitled to a decree against Dolan for the whole damages for making and selling all the infringing articles that he made and had sold for him and against the defendants in the other case for the damages resulting from what of those articles they sold for him.
451 Satisfaction of these damages by any of the defendants in either case will, however, be satisfaction of that amount in both cases. It is not necessary that the fact that the same damages are included in both decrees should appear either in the reports or decrees in order to limit the plaintiffs to one satisfaction. If they should attempt to enforce collection of that amount a second time they would be restrained by proper proceedings. It would be well, nevertheless, that this fact should appear. The master would doubtless have stated it in the reports if the defendants had so requested. As they did not so request, the want of the statement is no ground for setting aside or recommitting the reports. As the fact is conceded, it may be stated in the decrees. Exceptions overruled, reports accepted and confirmed, and decrees to be entered accordingly.

Arthur v. Briesen, for plaintiffs; John R. Bennett, for defendants.

(Endorsed:) U. S. C. C., S. D. N. Y. Jennings & *al.* *v.* Dolan. Same *v.* Kibbe & *al.* Decision, Wheeler, J. (File-mark:) U. S. circuit court. Filed Feb. 9, 1887. Timothy Griffith, clerk.

452 Circuit Court of the United States, Southern District of New York.

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| ABRAHAM G. JENNINGS and WARREN P. JENNINGS *vs.* HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe. | In Equity. No. 2216. |

The master's report made in pursuance of the interlocutory decree in this cause having been duly filed on the 28th day of January, 1886, which said master's report finds thirteen hundred and ninety-two dollars and eighty-eight cents ($1,392.88) as recoverable dam-

ages, and the defendants having filed exceptions thereto on the 1st day of March, 1886, and such exceptions having come on to be heard by this court, and Mr. John R. Bennett having been heard in support of such exceptions and Mr. Arthur v. Briesen having
453 been heard in opposition thereto: Now, therefore, upon consideration hereof, and on motion of Briesen & Steele, solicitors for the complainants, it is ordered, adjudged, and decreed that the said master's report be, and the same hereby is, in all things confirmed, and that the complainants, Abraham G. Jennings and Warren P. Jennings, do recover of the defendants, Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, and their firm of Kibbe, Chaffee, Shreve & Co., the sum of thirteen hundred and ninety-two dollars and eighty-eight cents ($1,392,88), with interest thereon from January 19th, 1885, the date of entering the interlocutory decree herein, to the date of entering this decree, together with the sum of twenty-four dollars and twenty-three — ($24.23), taxable costs on the reference before the master, and the sum of ten dollars and forty-five cents ($10.45), fees of the clerk on enrolling this decree; and that the said defendants pay said sums to the complainants, and that the complainants have execution and proper process of this
454 court for the collection thereof.

And it is further ordered, adjudged, and decreed that should the defendant in the suit of these complainants against Thomas Dolan, No. 2196, now pending in this court, pay to these complainants the amount of the judgment in that case, then such payment shall also operate as a partial satisfaction of the judgment in this case—that is, shall satisfy this judgment to the extent of thirteen hundred and ninety-two dollars and eighty-eight cents.

(S'g'd) HOYT H. WHEELER.

(Endorsed:) Circuit court of the U. S., southern district of New York. A. G. Jennings & *al. vs.* H. R. Kibbe & *al.* In equity. Final decree. Briesen & Steele, sol'rs for compl'ts, 229 B'dway, N. Y. city. (File-mark:) U. S. circuit court. Filed Feb. 12, 1887. Timothy Griffith, clerk.

455 Circuit Court of the United States, Southern District of New York. In Equity.

ABRAHAM G. JENNINGS & *al.*
*vs.*
HENRY R. KIBBE & *als.*
} No. 2216.

It is hereby stipulated that the foregoing may constitute the record to be sent by the clerk of this court to the clerk of the Supreme Court of the United States on the appeal to said Supreme Court in the above-entitled cause.

N. Y., Oct. 11, 1887.

(S'g'd) JOHN R. BENNETT,
*Counsel for Def'ts.*

(S'g'd) A. v. BRIESEN,
*Counsel for Appellees.*

(Endorsed:) U. S. circuit court. Filed Oct. 12, 1887. Timothy Griffith, clerk.

456 United States Circuit Court, Southern District of N. Y., Second Circuit. In Equity.

ABRAHAM G. JENNINGS, Survivor of Abraham G. Jennings and Warren P. Jennings,
*vs.*
HENRY R. KIBBE, EDWARD J. CHAFFEE, GEORGE H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Doing Business as Kibbe, Chaffee, Shreve and Company. } No. 2216.

To the honorable the Supreme Court of the United States:

The appeal of the above-named defendants and appellants respectfully showeth—

That the above-named complainants and appellees filed their bill of complaint in the circuit court of the United States for the southern district of New York against the above-named defend-
457 ants and appellants, reciting the grant and issue of design letters patent of the United States No. 10448, granted Warren P. Jennings February 12, 1878, for a new and original design for "lace fabric," and letters patent No. 218,032, dated July 29, 1879, granted to Abraham P. Jennings and Warren P. Jennings for an improvement in lace purling, and charging that the said defendants and appellants had infringed said design letters patent and said letters patent, and praying for a decree, an injunction, and account.

That these defendants and appellants appeared and filed answer denying the allegations of the said bill of complaint, and that they infringed either said design letters patent No. 10448 or said letters patent 218,032, or intended so to do.

That thereafter this cause was heard on the pleadings and proofs taken therein by his honor Hoyt H. Wheeler, district judge, who afterwards and on or about the 10th day of January, A. D. 1885, filed an opinion that said defendants and appellants had not
458 infringed said design letters patent, but sustained the validity of said letters patent No. 218,032, and finding that said defendants and appellants had infringed the same, and ordering a decree for an injunction and account to be entered in favor of complainants and appellees without costs except on the account.

That, in accordance therewith, an interlocutory decree was entered ordering an injunction to issue restraining said defendants and appellants from further infringing said letters patent No. 218,032 and referring this cause to a master to take an account of the gains, profits, and advantages derived by the said defendants and appellants from and through said infringements and to assess the damages suffered by complainants by reason of said infringement, without costs except on the account.

That the master to whom this cause was so referred, having taken proofs and heard the parties on the matters referred to, made his

report thereon, to which exceptions were filed by the said defendants and appellants, and on or about the — day of ——, 1887, a
459 final decree was entered in this cause confirming the report of the master, and wherein it was ordered that the complainants and appellees herein do recover from the said defendants and appellants the sum of thirteen hundred and ninety-two dollars and eighty-eight cents ($1,392.88), and that the complainants and appellees have due execution and proper process for the collection thereof.

Wherefore these appellants appeal from the whole of the decree of the said circuit court of the United States and respectfully pray that the decree of the said circuit court and the pleadings, proofs, exhibits, and proceedings in said cause may be forthwith sent to the Supreme Court of the United States, and that said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed and a decree made dismissing said bill of complaint with costs, or such other decree as to the said Supreme Court shall seem just.

(Signed) JOHN R. BENNETT,
*Counsel for Defendants and Appellants.*

460 The appeal is allowed as prayed for. Citation to issue, bond having been approved.

(Signed) HOYT H. WHEELER.

(Endorsed:) U. S. circ't court, so. dist. of N. Y. In equity. A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Appeal. Copy served March 24, '87. (S'g'd) Briesen & Steele, compl'ts' sol'rs. (File-mark:) U. S. circuit court. Filed Mar. 25, 1887. Timothy Griffith, clerk.

461 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

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| A. G. JENNINGS, Surviving Complainant in A. G. Jennings and W. P. Jennings, *vs.* HENRY R. KIBBE, EDWARD J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, Trading, &c. | No. 2216. Bond for Damages and Costs. |

Know all men by these presents that we, Edward J. Chaffee and Robert E. Lester, of the city, county, and State of New York, are held and firmly bound unto the above-named A. G. Jennings and W. P. Jennings in the sum of twenty-seven hundred dollars, to be paid to the said A. G. Jennings & W. P. Jennings; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the fourth day of March in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas the above-named defendants have prosecuted an appeal to the Supreme Court of the United States to reverse the decree and judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named defendants shall prosecute said appeal to effect and answer all damages and costs that may be decreed against them and discharge the same in full, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

EDW'D J. CHAFFEE. [L. S.]
ROBERT E. LESTER. [L. S.]

Sealed and delivered and taken and acknowledged this fourth day of March, 1887, before me—

GEO. H. SONNEBORN.
S. S. WHITE.

462 UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

Edward J. Chaffee and Robert E. Lester, each being duly sworn, each deposes and says for himself that he is worth the sum of twenty-seven hundred dollars over and above all his just debts and liabilities.

(S'g'd) EDW'D J. CHAFFEE.
(S'g'd) ROBERT E. LESTER.

Sworn to this fourth day of March, A. D. 1887, before me, and the name Robert E. Lester was first inserted over the erasures before signing.

(S'g'd) GEO. H. SONNEBORN,
[NOTARIAL SEAL.] *Notary Public, N. Y. Co.*

[Endorsed:] No. 2216. Vol. —, page —. U. S. circuit court. A. G. Jennings *et al. vs.* Henry R. Kibbe *et al.* Bond for costs on appeal. —— ——, proctor. The within bond is approved as to form and sufficiency of the sureties. Dated N. Y., M'ch, 1887. (S'g'd) Hoyt H. Wheeler. (File-mark:) U. S. circuit court. Filed Mar. 10, 1887. Timothy Griffith, clerk.

463 By the honorable the judge of the circuit court of the United States in and for the second circuit and southern district of New York to Abraham G. Jennings, surviving complainant, &c.:

Whereas Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, lately doing business as Kibbe, Chaffee, Shreve & Company, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the second circuit and southern district of New York in favor of A. G. Jennings and W. P. Jennings, and have filed the security required by law: You are therefore hereby cited to appear before the said Su-

preme Court, at the city of Washington, on the second Monday of October, 1887, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of March, A. D. one thousand eight hundred and eighty-seven.

464 (Signed) HOYT H. WHEELER, *Judge.*

(Endorsed :) U. S. circuit court, so. dist. of N. Y. In equity. A. G. Jennings *et al. vs.* Henry R. Kibbe & *al.* Citation. Copy served March 24, '87. (S'g'd) Briesen & Steele, compl'ts' sol'rs. (File-mark :) U. S. circuit court. Filed Mar. 25, 1887. Timothy Griffith, clerk.

465 UNITED STATES OF AMERICA, } *ss :*
*Southern District of New York,* }

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to four hundred and sixty-four, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Abraham G. Jennings *et al.* against Henry R. Kibbe *et als.* as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twelfth day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the said United States the one hundred and twelfth.

Seal of U. S. Circuit Court, South. Dist. New York.

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover : S. New York C. C. U. S. No. 266. Henry R. Kibbe, Edward J. Chaffee, George H. Shreve, Henry S. Stokes, Albert K. Thompson, and Henry G. Kibbe, as Kibbe, Chaffee, Shreve & Company, appellants, *vs.* Abraham G. Jennings. Filed October 20, 1887.

FILED,
MAR 25 1891
JAMES H. MCKENNEY,
CLERK.

# IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

Nos. 265 and 266.

THOMAS DOLAN,

*Appellant,*

*vs.*

ABRAHAM G. JENNINGS, Survivor, &c.,

*Appellee.*

HENRY R. KIBBE, ET ALS.,

*Appellants,*

*vs.*

ABRAHAM G. JENNINGS, Survivor, &c.,

*Appellee.*

# Brief and Argument for Appellants.

JOHN R. BENNETT,
*Counsel for Appellants.*

LIVINGSTON MIDDLEDITCH & CO., Printers, 149 to 153 Leonard St., N. Y.

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# IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

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| THOMAS DOLAN, Appellant, vs. ABRAHAM G. JENNINGS, Survivor, &c., Appellee. | No. 265. |
| HENRY R. KIBBE, *et als.*, Appellants, vs. ABRAHAM G. JENNINGS, Survivor, &c., Appellee. | No. 266. |

## BRIEF AND ARGUMENT FOR APPELLANTS.

### STATEMENT OF CASE.

By the bills, which are in the usual form, the appellants, Thomas Dolan of Philadelphia, the manufacturer, and Kibbe, Chaffee, Shreve & Co., of New York, the vendees of the articles in question, are charged with infringement of the claims of Letters Patent No 218,-032, issued to A. G. & W. P. Jennings, July 29th, 1879, for Improvement in Lace Purling and Design Patent

No. 10,448, issued to W. P. Jennings February 12th, 1878, for design for a Fringed Lace Fabric (Rec., p 2).

The appellants in their answers deny the charge of infringement as to both of the said patents and as to patent No. 218,032, asserts its invalidity upon two grounds: (1) want of novelty based upon the prior manufacture of the exact fabric or article, covered by the claims of the patent, at the factory of the appellant Thomas Dolan, in the City of Philadelphia, and (2) lack of patentability in view of the prior art, and, especially as exhibited in the prior design patents, issued to the appellee and his partner in business, No. 10,388, Jan. 1st, 1878, and No. 10,448, Feb. 12th, 1878 (Rec. p. 9).*

The Circuit Court—Judge Wheeler—having heard the cases at final hearing upon the pleading and proofs found no infringement as to Design Patent No. 10,448, and directed the dismissal of the bills as to that patent, but as to patent No. 218,032 directed the entering of an interlocutory decree sustaining said patent, and ordering an accounting thereunder (Rec. p. 271).

From a reading of the opinions of the Court, printed at page 270 of the Record, it will be found that the learned Judge made no reference whatever to the defense of want of patentability and apparently gave it no consideration; his opinion being confined to a consideration of the Dolan anticipation, which he finds is not sustained, and the question of infringement.

The cases having been referred to a Master he found and reported that the appellant Dolan had made and sold $3,075\frac{9}{12}$ dozens of the articles in question, of which number the defendants, Kibbe, Chaffee, Shreve & Co., had sold $2,785\frac{9}{12}$ dozens; that the appellants, trading as A. G. Jennings & Son, had an established license fee of fifty cents (50cts.) per dozen, cased upon a license issued to Marriot & Crine, and that the appellants were entitled to recover upon the basis of such

*Reference is always to the Kibbe Record unless the Dolan Record is specified.

an established license fee, fifty cents per dozen upon the number of Nubias manufactured by the appellant Dolan, as well as upon the number—being of the number included in those manufactured by Dolan—sold by the appellants, Kibbe, Chaffee, Shreve & Co., and accordingly assessed the sum of $1,537.88 against the former, and the sum of $1,392.88 against the latter. Dolan Rec. p. 27. Kibbe Rec. p. 295.

Exceptions were duly taken and filed to the reports of the Master in both of the cases and are printed at page 395 of the Kibbe Record and page 27 of the Dolan Record.

The Circuit Court, Judge Wheeler, overruled the exceptions and accepted and confirmed the report of the Master, the reasons for which are set forth in the opinion printed at page 297, and directed the entry of final decrees, which were accordingly entered (Dolan Rec. p. 29; Kibbe Rec. p. 298) and from which these appeals are taken. (Dolan Rec. p. 30; Kibbe Rec. p. 30.) No appeal was taken by the complainants in the Court below from the decrees dismissing the bills as to design patent No 10,488.

The cases were brought in the Circuit Court by "Abraham G. Jennings and Warren P. Jennings, doing business in the City of New York, County and State of New York, and citizens of the State of New York" (Record p. 2), who compose the firm of A. G. Jennings & Son. (Record, Jennings deposition, p. 56, Q. 1; Kibbe deposition, Q. 6, p. 147; Townsend deposition, x Q. 19, p. 115; Jennings, p. 131, Q. 28-29; Button, p. 65, Q. 20 and Ward, p. 121, Q. 5.)

After the entry of the final decrees and before the allowance of the appeals the son, Warren P. Jennings, died, and these actions surviving to the surviving partner, Abraham G. Jennings, both the appeals and citations were directed to him as survivor, etc. (Kibbe Rec. p. 300-2; Dolan Rec. p. 30-2.)

Moses vs. Wooster, 115 U. S., p. 285; McNutt vs. Bland, 2 How., p. 28.

By stipulation the record in the Kibbe case No. 266, is made a part of the record in the Dolan case No. 265. (Dolan Rec. p. 30.)

## Assignment of Errors.

The Circuit Court erred :

1st. In not dismissing the bills of complaint as to Letters Patent No. 218,032.

2d. In sustaining the validity of the said patent and finding the appellants to have infringed its claims.

3d. In not holding the said patent void for want of patentable invention in view of the prior art.

4th. In not holding the said patent void for want of novelty in that it was anticipated by the fabric previously manufactured at the factory of the appellant, Thomas Dolan, in the city of Philadelphia.

5th. In construing the claims of the said patent so as to include a fabric of the construction of "Exhibit Dolan Nubia B."

6th. In holding that the complainants in the Court below had an established license fee under Letters Patent No. 218,032.

7th. In holding that the complainants in the Court below had an established license fee of fifty cents per dozen, which was a legal measure of damages against the appellants for the sole use of Letters Patent No. 218,032.

8th. In entering judgment against these appellants for more than nominal damages, and especially in entering judgment against the appellants Kibbe, *et als.*, for the Nubias sold by them and accounted for by the manufacturer, the appellant Thomas Dolan, and included in the judgment entered against him.

## Appellant's Points.

The points chiefly relied on are:

(1.) Want of patentable invention.
(2.) Anticipation; and
(3.) Non-infringement.

## Want of Patentability.

The patent in suit (Rec. p. 155) is for a fabric termed a reticulated lace fabric or purling form of pillars, composed of two or more parallel longitudinal rows of meshes, or central stems through which a thread is passed back and forth in a manner to form on both sides of the meshes or central stems, laterally projecting loop, and by the joining of those pillars at proper intervals by crossing or joining the meshes or central stems, to form the reticulation. This precise fabric, with a single mesh or central stem instead of two, was old. (Jenning's Design Patent, No. 10,388, Jan. 1st, 1878.) What is termed a fringe is formed by simply continuing the pillars without joining them to form the reticulation. Such fringe with a single mesh or central stem, instead of two, was old. (Jenning's Design Patent, No. 10,488, Feb. 12, 1878.) In speaking of the fabric of this patent, the appellant's expert, Henry B. Renwick, says (Rec., p. 263):

> "In the fabric of the patent what is called the "warp threads are knit into a chain, such a chain "as is formed from a single piece of string by a "boy with his fingers in passing one loop of string "through the last-formed loop of the same "string. Two such chains are knit side by side, "and are the meshes '*a*' of the patent. The ma- "chine knits a series of these double chains some "distance apart, and while the chains are being "knit loops of yarn—the loops '*b*' of the patent

"—are passed through the chains by proper "yarn-carriers, these carriers traversing to and "fro on each side of the chain and producing a "sort of feather-like fabric, the chains represent- "ing the stem of the feather. Each set of two "chains form what is called on the patent a 'pil "lar,' and after a certain length of these pillars "have been knit each pillar is fastened to its "neighbor by crossing or joining the chains '*a*,' "and after they have been thus joined the pillars "are again knit separately for a certain distance, "and then the meshes or chains '*a*' are again "joined together. This mode of manufacture "produces a reticulated fabric, and when a suf- "ficient length of it has been formed, the pillars "as a whole are knit for a certain distance with- "out any joining of the chains of the pillars, "thus forming a certain sort of fringe. This "fringe, though of less length than that shown "in the drawing, would be formed whenever the "fabric is cut into through the line of joining "of the meshes '*a*,' and the fabrics, as I know, "are usually knit in lengths and cut apart, and "the fringe of the patent is formed by omitting "the joining of the chains for a greater distance "than usual, and then cutting through the pil- "lars. The patent is clear on the subject that "the reticulation is formed by joining the chains "or meshes '*a*.'

"The patent states that, instead of two, three "or more rows of meshes or chains '*a*' for each "pillar may be used; and, further, that 'were it "not for the multiple row of meshes in each pil- "lar the loops '*b*' would turn up and thereby "destroy to a great extent the beauty of the "fabric which—is desired to produce by this in- "vention.

"This statement is incorrect, and unless the "chains or rows of meshes are placed at a dis- "tance apart, as it is stated that they may be in "the patent and not adjoining each other as "shown in the drawing, the drawings themselves "showing that the loop will turn up as purl, *and* "the fabric when made presents, as I know, the "purled appearance, as shown in the drawing.

"The phrase above quoted appears to have "been put in the patent for the purpose of argu- "ing that the patent is not based on a mere "duplication, the patent and claims as a whole "being strictly limited to a fabric and fringe "precisely the same in all respects, except that "there is only one chain in each pillar, and not "claiming a fabric and fringe precisely the same "in all respects, except that there is only one "chain in each pillar.

"The claims of the patent refer to the reticu- "lated lace fabrics which I have described, con- "sisting of chains and loops, where there are two "or more continuous rows of meshes to each pil- "lar, whereby the loops are held flat. Now, this "language may be construed as claiming the "fabric shown in the drawing, where two rows of "chains are used to each pillar which do not "hold the loops flat, or it may be construed to "cover the fabric only when the chains are "placed so far apart that they will hold the "loops flat; but in my opinion the claim is in- "tended, when taken in connection with the spe- "cification, to cover the fabric, whether the "chains adjoin, as stated in the patent or are "placed at a distance apart in each pillar so that "the loops '*b*' will traverse the space between "the two rows' of chains.

"The second claim refers to the same fabric "with the same pillars carried out so as to form "a fringe.

"The fabric is not limited to the special dis-
" tance of projection of the loops from the sides
" of the chains, nor to the distance apart of the
" loops, nor to loops all projecting to the same
" distance from the chains; and I should be of
" this opinion even if there were no words in the
" patent to that effect, because the mode of knit-
" ting or concatenation of the thread would
" be the same, with loops of the same or different
" length or equally or unequally distributed
" along the pillars."

It is stated in the specification that "this inven-
" tion relates to an improved reticulated purling, and
" has for its object to so construct the same that the
" laterally-projecting loops will be held in proper flat
" position while and after the pillars are joined in the
" reticulated form."

The invention then relates not to a new fabric but to the improving of an old fabric by so constructing the old fabric that its laterally projecting loops will be held in a flat position, that is in a plane parallel or substantially parallel to the face of the longitudinal central meshes or stems so as to present regular laterally projecting loops instead of irregular laterally projecting loops, where all the loops do not project in a plane parallel or substantially parallel to the face of the central meshes or stems. In both cases the fabric is a reticulated lace purling formed of pillars composed of a central longitudinal mesh or meshes through which a thread passes back and forth in a manner to form on both sides of the central mesh or meshes, laterally projecting loops and it matters not, other than in appearance to the eye, whether the loops project in the same or different planes from that parallel or substantially parallel to the face of the central mesh or meshes. Now, according to the statement in the patent: "The invention consists in binding the laterally
" projecting loops of each pillar by two rows of meshes"

instead of by one as in the older fabric. It can of course mean nothing else. In other words, the alleged invention is stated to consist in binding and holding flat the laterally projecting loops of each pillar of the old fabric by two meshes instead of by one, for that indeed is the only difference in construction specified in the patent. At most it is simply a duplication of the central mesh or stem with a corresponding difference in the degree of flatness in which the loops are held. Surely mere duplication is not invention, and yet that is all that the alleged invention is stated in the specification to consist of. Nor is duplication invention although the result obtained may be different in its effect.

That there is no difference in the construction of the fabric whether of one or two rows of meshes or central stems is placed beyond all doubt by the description of the construction of the fabric, which is as follows:

> "The letters A, A, &c., represent the pillars of "the improved lace fabric. Each pillar is com- "posed of laterally-projecting loops *b b*, that are "joined and held in place by double rows of "meshes *a a*,"—there again drawing the distinction between joining and holding the laterally-projecting loops in place by a double row of meshes instead of by a single row—"The pillars "are joined at proper intervals to form a reticul- "ated fabric, as clearly shown in Fig. 2. The "loops *b* are knit into the meshes *a*, and project "at both sides therefrom at equal or suitable "distances. The double row of meshes *a a* in the "pillars will firmly hold the loops *b* in a flat po- "sition, to wit, in a plane parallel substantially "to the face of the meshes."

Not that the double row of meshes in any way changes the construction of the fabric, but that having greater bearing surfaces upon the laterally-projecting loops will

more firmly hold, or tend to hold them in a flat position than when only a single row of meshes is used. This view is confirmed by the paragraph following the above-quoted paragraph :

> " Were it not for the multiple row of meshes " in each pillar the loops *b* would turn up and " thereby destroy, to a great extent, the beauty " of the fabric which it is desired to produce by " this invention."

So that it is the beauty of the fabric and not its construction that it is claimed is effected by the multiple row of meshes ; but even this claimed beauty depends entirely upon the degree of flatness in which the loops are held. If the standard of beauty be holding the loops in an absolutely flat position, then the rows of meshes would, of necessity, have to be placed apart, or three, four or even more rows would have to be used depending upon the length of the laterally-projecting loops. The number of rows of meshes necessary to hold the loops in a plane parallel substantially to the face of the meshes depends entirely upon the length of the loops as well as the width of the meshes. If a wide mesh and a short loop it stands to reason that the loops would be held absolutely flat ; if long loops and a narrow mesh then two or even more rows of meshes would be necessary to accomplish the purpose. Would it not then be obvious to anyone, even though not skilled in the art, that if it was desired to hold the loops flat or substantially flat, a duplication of meshes would be necessary? If there be invention in employing two rows of meshes where one had previously been employed, it would surely be invention to employ three instead of two, since the use of three would more firmly hold the loops in a flat position than would the use of two, precisely as would the use of four hold them more firmly than would the use of three and so on. Yet that would be simply duplication which I assume no one would con-

sider was patentable in view of the well-settled rule of law, although in each case the degree of flatness of the loops would vary.

Can it be that there is invention in the degree of flatness in which the laterally projecting loops are held? For upon that alone rests whatever foundation there is for invention, since the number of rows of meshes to be used, whether one or more, depend entirely upon the degree of flatness to which it is desired to hold the loops.

It is stated in the specification that: "The two "rows of meshes of each pillar A may be made "to adjoin each other, as shown in the drawings; "or they may be placed at a distance apart, in "which case the threads forming the loops *b* will "traverse the space between the two rows. * * "* * * Instead of using two rows of meshes "*a*, on each pillar, three or more rows may be "used."

Now, if the two rows may be placed apart, or if three or four rows may be used and still come within the invention of the patent, why not one row, since the difference is solely one of degree of flatness in which the loops are held. And it seems to me that there would be a much greater difference in the degree of flatness between the use of two and three or four, than between the use of one and two. The use of one is not within the patent, though the fabric is the same, differing only in the degee of flatness in which the loops are held, but the use of two or more is within the patent and it is claimed constitutes a patentable invention.

Mr. Renwick in considering the statement of the patent that

> "Were it not for the multiple row of meshes "in each pillar, the loops *b* would turn up and "thereby destroy, to a great extent, the beauty

"of the fabric which it is desired to produce by "this invention."

Says (Record, page 263):

"This statement is incorrect and unless the "chains or rows of meshes are placed at a dis- "tance apart as it is stated they may be in the "patent and not adjoining each other, as shown "in the drawings, the drawings themselves "showing that the loops will turn up as purled, "and the fabric, when made, presents, as I "know, the purled appearance as shown in the "drawings."

In this Mr. Renwick is confirmed both by the drawings and the appearance of the fabric with which he was perfectly familiar.

Furthermore the Nubia "Complainant's Exhibit Jennings Nubia" produced by the appellees as made under and in accordance with the patent in suit (Record, p. 131) shows that the laterally-projecting loops are not held in a flat position nor in a plane parallel substantially to the face of the meshes, although the pillars are provided with two parallel longitudinal rows of meshes as shown in the drawings; so that that which is the substance of the invention, viz., the holding of the laterally-projecting loops in a flat position, that is, in a plane parallel substantially to the face of the meshes, is not present in the very nubia which the appellees themselves produced as made under and in accordance with the patent in suit. True, the laterally projecting loops are held in a flatter position and more nearly in a plane parallel to the face of the meshes than in the case of the same fabric having a single row of meshes or central stem, yet the difference is simply a difference in degree.

Even the appellees' expert, Mr. Sloane, admits that there will be a difference in the flatness of the loops de-

pending upon whether the two rows of meshes are placed close together or apart, but that, he says, is a "question of degree." Conceding it, then is not the difference in flatness between the use of one and two rows of meshes simply a question of degree (Sloane Rec., p. 127).

> "18 Q. Does it make a difference whether you place the two rows of meshes close together or "leave some space between in the pillar, as to "the position of the loops?
>
> "A. If the chains were separated by a consid- "erable distance they would probably tend to "keep the loops a little flatter. It is a question "of degree, and within the limits of the usual "construction of such a fabric it would make "make little difference whether the two rows "were close together or were separated."

It is not claimed that there is anything peculiar in the method of manufacturing the fabric or that the method differs in any respect whether the fabric has a single or two or more rows of meshes; nor that any special machinery is necessary for the manufacture of the fabric—it being distinctly stated that it may be made upon different well known machines which are alike adapted for the making of a fabric with either a single or two or more rows of meshes. It is simply a question of whether you make one longitudinal chain or two or more similar parallel chains. The operation is in no wise changed.

It is said in the patent "The pillars are produced on "the knitting-needles of the machine in the ordinary "manner, and are made to cross and form the reticu- "lated fabric, the same as is done in the manufacture "of hair-nets on such machines," so that it is admitted that the fabric is produced on the same machines that are used in the manufacture of hair-nets. The pillars producing the reticulated fabric is formed by joining or

crossing the meshes of the pillars in the ordinary manner. It is not asserted by the appellees that the manner of joining the pillars together is new or gives any novelty whatever to the alleged invention—that resting entirely upon the construction of the pillars, and such indeed was Judge Wheeler's view, for he says "the pillars are really the principal things." (Rec. p. 271.)

The manner of joining the pillars together to form the reticulation is by joining or crossing the meshes of the pillars; of this there can be no doubt, for it is stated in the patent "the pillars are joined at proper intervals "to form a reticulated fabric, as clearly shown in Fig-"ure 2," and Fig. 2 shows the meshes joined together. Again, it is stated that the pillars "are made to "cross and form the reticulated fabric," and again that the "pillars are made to cross and join and form the "net or mesh." No other form of joining the pillars, other than by joining or crossing the meshes, is either shown, described or suggested in the specification; so that unless the invention is confined to the production of the pillars—as distinguished from the fabric as a whole, formed by joining the pillars at proper intervals, the invention is limited to a fabric in which the pillars are joined by joining or crossing the meshes.

A further feature of the invention is said to consist in extending the pillars a certain distance without joining them at intervals so as to form a fringe; in other words, that after having joined the pillars by joining or crossing the meshes, then to cease connecting them, to an extent sufficient to form a fringe on the finished fabric, constitutes invention. This feature of invention is thus stated:

"The above described fabric may be made with "fringes *c*, of the same construction as the remainder "of the fabric. These fringes are formed by extend-"ing the pillars beyond their points of contact, as "clearly shown in Fig. 2. So simply extending

the same pillars from which the body of the fabric is formed, without connecting them, is to be sustained as involving invention. It is impossible to believe that any argument is necessary to satisfy this Court of the absurdity of such a contention, even assuming that pillars, of which the body of a fabric is composed, had not been before extended out to from a fringe of which there are many examples in the Exhibit Dolan books.

> The first claim is: "The reticulated lace "purling composed of pillars A A, each pillar "consisting of laterally projecting loops *b b*, "and of two or more continuous rows of meshes, "whereby the loops are held flat, substantially "as specified."

This claim is for an article as distinguished from a method of manufacture. The article is a fabric composed of pillars consisting of laterally projecting loops and two or more continuous rows of meshes, the pillars being connected together at proper intervals by joining or crossing the meshes. If it is not for a fabric in which the pillars are so connected to form the desired reticulation, then it must be for the pillars, without reference to the manner in which they are connected.

It is to be observed that the novelty of the claim, whether it relates to the fabric as a whole, or to the pillars composing the fabric, is made to rest upon the use of two or more continuous rows of meshes whereby the loops are held flat as distinguished from the use of one row of meshes, which, according to the statement in the specification would, to a certain extent, permit of the loops projecting in planes other than a plane substantially parallel to the face of the meshes. Emphasizing the point heretofore made that the novelty of the claim rests upon the degree of flatness in which the loops are held and which depends not only upon the rows of

meshes, whether one or more, but upon the width of the meshes, as well as upon the length of the loops. To hold that invention and that too without reference to the prior art, would be to do violence to the well settled rule of law as repeatedly announced by this Court.

The second claim is: "The reticulated lace purling "composed of pillars A A and of fringes *c c*, the "fringes being a continuation of the pillars, substanti- "ally as specified," and refers to the same fabric or pillars as are specified in the first claim, being continued out to form a fringe instead of joined together to form reticulation as in the body of the fabric.

Prior to the patent in suit two design patents were issued—one to Abram G. Jennings, January 1, 1878, No. 10,388, for "Lace Purling" (Record, p. 296), and one to Warren P. Jennings, January 12, 1878, No. 10,448, for "Fringe Lace Fabric" (Record, p. 157)—and it was contended in these cases that the latter patent was infringed by the appellants.

The design patent, No. 10,338 of January 21, 1878, shows and describes a reticulated lace purling or fabric of the precise construction of the fabric of the patent in suit with the exception that the pillars composing the fabric, have a single central stem or mesh instead of two as in the patent, and consequently the loops are not held so flat in the fabric of the design patent as in the fabric of the mechanical patent. It cannot be denied that such is the fabric of the design patent, for not only is it so described and shown, but as matter of fact both the Circuit Court and this Court, in cases between these same parties, held these appellants to have infringed that design patent in the manufacture and sale of a fabric of precisely the same construction as the fabric of the patent in suit, having one instead of two rows of meshes or central stems.

Kibbe *v.* Jennings, 122 *U. S.*, *p.* 640.
Jenning *v.* Kibbe, 20 Blat., p. 353.

The only difference between the fabric of the design patent and the fabric of the patent in suit, is in the number of central meshes or stems—the pillars of the design fabric having one and the pillars of the patent in suit having two, as can be readily determined by the Court, Mr. Renwick having produced a nubia of the fabric of the design patent "Defts. Exhibit Single Pillard Nubia" (Record, p. 269) which can be compared with the nubia of the fabric of the patent in suit "Complainant's Exhibit Jennings Nubia." The two exhibit nubias will be found to be identical other than in the number of rows of longitudinal meshes or central stems.

The appellees in distinguishing between the fabrics of the design patent and the patent in suit, have designated them as "the single and double pillared threads"—(Marriott & Crine License, Rec., p. 290; Button License, p. 292)—the single pillared thread being the fabric of the design patent and the double pillared thread the fabric of the patent in suit.

I repeat that there is no difference between the two fabrics other than that the pillars of the design fabric have a single central stem, whereas the fabric of the patent in suit has two central stems.

This is admitted by the appellee's expert, Mr. Sloane, for although closely pressed to distinguish between the fabric of the patent and the fabric of the design patent, he could point out no other difference.

(Record, p. 127):

> "16 Q. What difference, if any, is there in the "appearance of the fabric described in Com- "plainants' Mechanical Patent No. 218,032 as "compared with the same fabric having but one "row of meshes or chains to hold the loops to- "gether?
>
> "A. The double row of meshes would certain-

"ly tend to hold the loops flat and in the plane "of the meshes.

"17 Q. Where there is only one chain or "row of meshes do you find any plane of such "meshes?

"A. One row of meshes is hardly enough to "determine a plane, while the double or mul- "tiple rows of meshes determine one with ac- "curacy."

(Record, p. 129):

"30 Q. Please examine the nubia marked "'Defendant's Exhibit Single Pillar Nubia,' "and compare the same with the fabric described "in 'Complainants' Exhibit Mechanical Patent "218,032.'

"A. The single pillar nubia you refer me to "differs in construction from the fabric of the "patent, because the loops of the pillars are "joined and held in place by single rows of "meshes instead of double rows. The single "row of meshes has not the effect of holding the "loops as flat as the double row of meshes. "That may be seen in 'Complainants' Exhibit "Dolan Nubia A.'"

The appellant's expert, Mr. Renwick, in speaking of this design patent, says (p. 264):

"I have read and do understand the design "patent referred to in the question, and believe "I understand the fabric therein described, al- "though the specification and photograph are not "so definite and exact as they should be. The "fabric described in this design patent is pre- "cisely the same fabric composed of meshes of "chains and loops (the chains being united at "intervals so as to form a reticulated fabric) as "that described in the fabric patent No. 218,032,

"referred to in my last answer, save and except
"that there is only a single chain to each pillar
"in the fabric of the design patent, while, on
"the contrary, in the fabric patent 218,032, there
"are two chains to each pillar, but in both fabrics
"the loops are the same, are held in the same
"way to form the reticulation, the sole difference
"between the two being that the chains are du-
"plicated, in the fabric patent 218,032. The
"single chains in the design patent and the double
"chains in the fabric patent perform precisely
"the same duty, viz.: the duty of confining the
"loops and of attaching the pillars to its neigh-
"bors by the crossing and union of the chains."

Clearly it is the fabric of this design patent that is referred to in the specification of the patent in suit and from which the fabric of that patent is distinguished. It was to exclude the fabric of this design patent that the description and claims of the patent in suit are limited to pillars having two or more rows of meshes or central stems. Can it be possible that there is any invention in the production of the fabric of the patent in suit in view of the fabric of the design petent? If so, it is because, as I have already pointed out, that there is invention in duplicating the rows of meshes or central stems of the pillars. For that is the sole difference between the two fabrics. It is simply adding to the fabric of the design patent a second or parallel row of meshes. A somewhat similar question was involved in the case of *Dunbar vs. Meyers*, 94 *U. S.*, *p.* 195, in dealing with which the Court said:

"Such machines for sawing lumber, con-
"structed with one deflecting plate, were well
"known and in general use years before the pat-
"entees in this case made their application for
"a patent; and the evidence satisfies the Court

"that for most purposes the machine will ope-
"rate as well and as successfully with one de-
"flecting plate as with two. Two deflecting
"plates may be better than one, where it is de-
"sired to split thin stuff into two parts of equal
"thickness, as in that case the saw kerf may be
"enlarged by deflecting the stuff on each side of
"the saw."

"Grant that two such plates are in certain
"cases better than one used alone, still the
"question arises whether it involves any inven-
"tion to add the second plate to a machine al-
"ready constructed with one plate."

This Court held that it did not, regarding the application of the second plate as a mere duplication of the first plate. So in the present case, grant that two rows of meshes will hold the laterally projecting loops flatter than one, still the question is whether it involved any invention to add the second row, there being nothing peculiar in the manner of the application of the second row.

Applying the rule in *Dunbar* vs. *Meyers*, it would seem to follow beyond all doubt, that it did not involve invention, being, as in that case, a mere duplication of the single row of meshes in the fabric of the design patent.

It is now well settled that mere duplication, and that, too, without reference to results, is not patentable. It was said by this Court in *Smith* vs. *Nichols*, 21 Wall., 112, that a "more extended application of the original "thought, a change only in form, proportions or de "gree, the substitution of equivalents, doing substan-"tially the same thing in the same way, by substantial-"ly the same means, with better results, is not such "invention as will sustain a patent,"—which is the present case.

At most the use of a second row of meshes or central stem was merely a carrying forward of the original idea of the earlier design patent for a similar fabric, which obviously was not invention, as was determined by this Court in the similar case of *Burt* vs. *Evory*, 133 *U. S.*, 395.

Dalton *v.* Jennings, 93 *U. S.*, p. 271.

The design patent No. 10,448 of February 12, 1878, is for what is termed a fringe lace fabric, and both shows and describes pillars of precisely the same construction as the pillars of the fabric of the patent in suit, with the exception that they have a single instead of a double row of meshes; in every other respect the pillars are identical, even to the extent of the loops being held in a flat position—that is, in a plane substantially parallel to the face of the mesh. And the fabric is described as follows:

> "A represents the lace fabric of usual kind.
> "B B are the disconnected fringes applied there-
> "to. Each fringe B is formed with loops at both
> "sides of a central stem or rib along its entire
> "extent, as shown, thus producing a peculiar,
> "full, and yet loose effect."

And the claim is,

> "The design for a lace fabric provided with
> "disconnected doubly-looped fringes B, having
> "loops at both sides of a central stem or rib,
> "substantially as shown."

If the description and claim were changed so as to read "central stems or ribs" instead of in the singular, you would have an accurate description of the fabric of the patent in suit. Furthermore, it would seem as if the appellees were estopped from denying that this patent shows the pillars of the fabric of the patent in suit, since they contended in these very cases that the defendants' nubias in controversy infringed this

patent, although they showed two central stems or ribs instead of one.

Mr. Jenning has testified that the fringe covered by the second claim of the patent in suit is the fringe of this design patent (Rec. p. 131).

> "24 Q. Can you produce a nubia made in ac-
> "cordance with the description given in the speci-
> "fication of Letters Patent No. 218,032, "Com-
> "plainants' Exhibit Mechanical Patent," show-
> "ing reticulated lace purling composed of pillars
> "consisting of laterally projecting loops and of
> "two continuous rows of meshes and having
> "fringes, being a continuation of the pillars, as
> "specified in said patent?
>
> "A. Yes; here is the nubia.
>
> "25 Q. Was the nubia produced by you made
> "under your direction?
>
> "A. It was.
>
> "26 Q. Were the fringes of that nubia made
> "according to the description contained in the
> "specification of 'Complainants' Exhibit Design
> "Patent No. 10,448?'
>
> "A. Yes.
>
> "27 Q. Does it show the design described
> "therein for a lace fabric provided with discon-
> "nected doubly looped fringes, having loops at
> "both sides of a central stem or rib, substanti-
> "ally as shown in said patent?
>
> "A. It does."

In comparing this design patent with the patent in suit, the appellant's expert, Mr. Renwick, says:

> "A. The patent is somewhat difficult to under-
> "stand, as the photograph is bad, but, as I
> "understand it, the fringe is the same fabric as
> "is represented in the fabric patent 218,032,
> "viz., a fringe composed of pillars, which pil-

"lars are formed of a chain of meshes of warp
"thread enclosing loops of yarn which project
"laterally from each side of the chain. I say
"the same fabric, but the fringe shown in the
"design patent No. 10,448 has not the meshes
"connected together so as to form a reticulated
"fabric as a whole, and as far as I can discover
"there is only one chain to each pillar instead of
"two or more chains for each pillar."

Here again we have presented precisely the same question as presented in connection with the first design patent, did it involve invention to duplicate the central stem or rib. If it did not, then the patent is void for want of invention. In considering this patent the appellees' contention that the claim is for the pillars and not for the mode of reticulation should not be overlooked, for if their construction be the correct one, and we have in this design patent the exact pillars—without, of course, the double stem or rib—then it is of no consequence that they are not joined in reticulation. Whatever be the true construction of the claims of the patent in suit they contain nothing of invention in view of the fabrics that are shown and described in the prior design patents referred to. Duplicate the central stem or rib of those fabrics and you have the exact fabric of the patent in suit.

A very similar case to the present is that of French *v.* Carter, 137 U. S., p. 239, decided at the present term. In disposing of that case the Court said, and I will not stop to explain the facts since, the case being so recent, they are undoubtedly fresh in the mind of the Court:

"Where the roof-stones are wider, as in the
"Billaud roof, there need be only a narrow
"ridge-stone, while where the roof-stones are
"narrower, as in the patented device, a wider

"ridge-stone or cap-stone is necessary. In the "latter case the cap-stone must rest upon the "gable-stones. In the former case it need not "do so. But, in each case, the vertical seam "into which water could enter, is covered, and "the structure is held together and locked at "the roof, so as to be made enduring by the "locking and the weight of the roof. The ques- "tion is one of degree only, as to the size of the "ridge-stone or cap-stone and the corresponding "width of the roof-stones. The difference be- "tween mechanical skill and the exercise of the "inventive faculty has been pointed out in "many decises of this Court. (Burt *v.* Evory, "133 U. S., 349, and cases there cited.)"

So in the present case the question is one of degree only as to the size of the mesh or meshes and the width of the loops. The loops are secured and held in place whether a single or double row of meshes are used ; the only difference being in the degree of the flatness in which the loops are held.

The prior design patents are competent as evidence in regard to the state of the art, and as a foundation for the inquiry whether it required invention to pass from the fabrics of the design patent to the fabric of the mechanical patent as much so as was the foreign publication in the case cited.

It is strenuously urged that the defence for want of patentability should prevail.

Although this defence was urged at the final hearing the learned Circuit Judge appears to have entirely overlooked it since it is not even referred to in his opinion.

## Non-Infringement.

The nubia "Exhibit Dolan Nubia B," termed by Mr. Renwick the parti-colored nubia, does not infringe either of the claims of the patent in suit. Upon this point Mr. Renwick says: (Rec. p. 267.)

> "A. The parti-colored nubia referred to in "the question, 'Exhibit Dolan Nubia B,' is a dif- "ferent fabric from both the fabric of the patent "218,031 and the fabric 'Exhibit Dolan No. 3,' "of the question. In both the latter fabrics the "meshes of warp threads or chains of the pillars "are crossed into the chains of adjoining pillars "so as to form the reticulation.
>
> "On the contrary, in the party-colored nubia "the loop threads are carried over from one pil- "lar into the neighboring pillar. The party-col- "ored nubia is, therefore, a concatenation of "threads differing both from concatenation of "the threads of the patent 218,032, and from the "Exhibit 'Dolan No. 3' of the question.
>
> "I understand the first claim of the patent "218,032 to be for a certain definite concatena- "tion of threads which forms a reticulated fab- "ric, and the second claim to be for that same "fabric in combination with the fringe; and, as "the reticulated fabric of the parti colored "nubia is a different fabric from that of the "patent, it is my opinion that the parti colored "nubia does not contain the invention referred "to in either of the claims of patent 218,032, "stating, perhaps, in repetition, but in order to "avoid all misconceptions, that in my opinion "the second claim of this patent is not for the "fringe alone and by itself, but to that fringe

"in combination with the fabric which is claimed "in the first claim."

In disposing of this question in the Court below His Honor Judge Wheeler said : (Rec. p. 271.) "The in- "fringement seems to be clear unless the patent is "limited to the peculiar mode of reticulation de- "scribed."

It is contended on the part of the appellants that the patent is so limited, since there is but one mode of reticulation shown and described, which is the joining or crossing of the central meshes or stems of the pillars. This mode is not found in the "Exhibit Dolan Nubia B." There is certainly nothing in the patent that would justify the Court in construing the first claim without reference to the mode of reticulation, and yet it is conceded that it must be so construed if it is to include the "Exhibit Dolan Nubia B" as an infringement. If the pillars of the claim are not joined together a reticulated lace purling would not be produced, and yet the claim calls for just such a fabric. Then does it not follow that the reticulation is a part of the claim, and that the mode of reticulation is that described in the specification.

As to the method described in the patent there can be no doubt, it being distinctly stated as already pointed out, that "the pillars are joined at proper "intervals to form a reticulated fabric, as clearly "shown in Fig. 2," and Fig. 2 shows the pillars joined together through the central meshes or stems. Again, it is said that the pillars produced "are made to cross and form the reticulated "fabric the same as is done in the well-known "manufacture of hair-nets"; and again, speaking of the reticulation it is said that the "pil- "lars are made to cross and join and form the net or "mesh." Either the first claim is for the pillars *per se*, or for the fabric composed of the pillars joined together

to form the reticulation in the manner described. It would seem as if it could not be construed for the fabric without reference to the mode of reticulation, and unless it is, the nubia "Exhibit Dolan Nubia B" does not infringe, since in that nubia the reticulation is not formed by crossing or joining the central meshes or stems of the pillars, but by carrying the loop threads from one pillar over into the neighboring pillar. A method which is entirely different from that set forth in the patent in suit.

## Prior Use.

The anticipation relied on is the manufacture of a reticulated lace purling of the exact construction set forth in the patent in suit at the factory of the appellant, Thomas Dolan, in the City of Philadelphia, between the years 1865 and 1872. A piece of the original fabric is produced marked "Exhibit Dolan No 3," in book marked "Samples to 1869, Thomas Dolan," which is the original sample book into which it was placed prior to 1870, and which contains only samples of fabrics made prior to 1870.

It is abundantly established that a fabric in all respects like the fabric "Exhibit Dolan No. 3," was manufactured at Mr. Dolan's factory within the period mentioned, and that the exhibit is a piece of the original fabric.

The fabric was termed "Seaweed," and was made up into various articles including nubias, hood tops, strips for trimmings, and the like, which were sent out in the regular course of business to the commission merchants then handling Mr. Dolan's goods and by them sold.

There is no dispute that the fabric "Exhibit Dolan No. 3," is of the exact construction of the fabric of

the patent in suit, for it is so testified to by the appellant's expert, Mr. Renwick (p. 265), as follows:

> A. "I have frequently examined the fabric, "Exhibit Dolan No. 3, mentioned in the ques- "tion, having first seen it in 1881. It is pre- "cisely the same fabric as that described in the "patent to Jennings, No. 218,032, in that modi- "fication shown in the drawings of the patent "where the two chains of each pillar are in close "proximity to each other, as shown in the draw- "ings. In the autumn of 1881 I gave directions "to have this sample, Exhibit Dolan No. 3, "reproduced in a whole piece at Mr. Dolan's "factory, and know that when that fabric was "in use or pulled so as to be ready for use that "the loops of the pillars purled or turned at "different angles, as shown in the drawings "of the fabric patent No. 218,032. The fabric, "Exhibit Dolan No. 3, is made with two ad- "joining chains of warp thread or meshes for "each pillar, with loops of yarn projecting "laterally from these chains and held in "position by passing through the loops of the "chain, and the chains of warp thread are "attached to their neighbor at intervals, as de- "scribed in patent No. 218,032, so as to form "a reticulated fabric. Fabric, Exhibit No. 3, "is in all respects constructed exactly in the "same way that the fabrics shown in the draw- "ings of patent No. 218,032 are constructed."

And to the same effect is the testimony of the appellee's expert, Mr. Sloane.

The manufacture of the reticulated lace fabric, Exhibit Dolan No. 3, is most positively testified to by no less than nine witnesses, the greater part of whom had directly to do with its manufacture and its makeup into various articles and the placing of such articles upon the market.

Not only is the book "Samples to 1869, Thomas Dolan," produced—containing a piece of the original fabric—but what is termed the Descriptive Book for the year 1866 is also produced, showing numerous references to a fabric or article termed "Seaweed" (Record, p. 45), which it is testified to was the name given to the fabric in question.

HENRY TRUITT (Rec. p. 157), who at the time of giving his testimony was a manufacturer on his own account, testifies that he was employed in Mr. Dolan's knit-goods department from April 1, 1861, to December 30, 1882, during the greater portion of which time he had entire charge of that department. He testifies that reticulated lace fabric like the sample, Exhibit Dolan No. 3, was manufactured at Mr. Dolan's factory prior to 1870, and identifies the sample, Exhibit Dolan No. 3, as being a piece of the original fabric. He says that the fabric was designed by Henry Boot—a designer in the employ of Thomas Dolan—some time during the years 1866–1868, and that he first saw Boot working at it on his loom; that afterwards the fabric was manufactured in quantities and made up into the various articles and sent to the commission merchants.

The design of the fabric was designated by him as "Seaweed" in order to distinguish it from other fabrics. He positively swears that such fabric was manufactured at Dolan's about 1868, and was manufactured from then until about 1870 to 1872, and that there were considerable quantities made of it, it being made into nubias, hood tops, the outside of clothes, and in strips for trimmings. The fabric naturally came under his observation from his being in the department in which those fabrics were made and from handling those goods. He knows that Exhibit Dolan No. 3 is a piece of the original fabric made at that time because it was preserved with other samples made before and during the year 1869, and it may have been first pasted on paper

and thereafter upon the business of Mr. Dolan's increasing, pasted in a book marked "Samples to 1869 Thomas Dolan", with other specimens or samples of goods made before that time. This was in the latter part of 1869 or fore part of 1870. He states that it has been taken from the book for reference and replaced. It was Truitt's duty to preserve the samples of the different fabrics made in uniform shape and to have them for reference when needed and the further purpose for which these samples were preserved was that they might be taken from the book and used for such purposes as the business of Thomas Dolan required.

Truitt testifies that the exhibit was taken from the sample book solely for the purpose of reference and reproducing the fabric. His knowledge of knitted fabrics is sufficient to enable him to testify positively that fabrics of the same construction as Exhibit Dolan No. 3 were manufactured by Thomas Dolan & Co. between 1866 and 1872.

He says it has been common practice to extend the fabric out without joining the parts together into meshes so as to form a fringe or finish.

He names upon cross-examination as parties who would know whether fabrics like Exhibits No. 3 were made at Thomas Dolan's factory, to be Thomas Dolan, Henry Boot (who had died before his testimony could be taken), Cornelius Jackson, Charles H. Salmon, William A. Stewart, Edward McDevitt, George McDevitt, William McDevitt, Samuel Martin, Mary Kimball, Mrs. Douglass, whose maiden name was Sarah Prathworth, and George Mousley.

It was customary to take samples from these books for reference and the parties having access to the book for that purpose were Mr. Dolan, Mr. Salmon and the foreman, whoever that might be, Henry Boot and Cornelius Jackson (88 x Q., page 166).

Samples Nos. 28 and 30 in the book marked "Samples to 1869, Thomas Dolan" having a single pillar were also

designed by Henry Boot from 1866 to 1868, and manufactured by Thomas Dolan & Co.

Samples in the book marked 1868 to 1869 (247 x Q., p. 180) are "of fabrics that were all made in consider-"able quantities. There might possibly be one or two "samples in the back part of the book, but otherwise "I believe all those samples were made up and sent "out."

Cornelius Jackson (Rec. p. 181) testified he worked for Dolan & Co. in 1869, and is a weaver and knitter by trade, and the first occupation with Dolan & Co. was that of running a loom. During his time Henry Boot was a designer and also foreman of the department. Jackson was put on the loom in 1870 "and made that fabric and continued on some time; made several warps of it." He made it in different ways; one double pillar and also the single pillar.

In answer to question 14, p. 182, he says he was at work weaving such fabrics for over four or five weeks and distinctly remembers that they were woven upon the English Rotary Warp Loom No. 16, (p. 192, Kibbe Record).

He distinctly swears, Q. 21, that he got at Thomas Dolan's factory a fabric like Ex. Dolan No. 3 and that the same was woven into Nubias with fringes, that is, "made with a straight fringe purled down the pillar." He wove the fabric into pieces the width of the loom and into Nubia shapes. He remembers first seeing the "Sample Ex. Dolan No. 3" in the book, "Samples to 1869, Thomas Dolan," in 1876, and he referred to the book to get ideas for a new pattern, and positively swears that the exhibit to his knowledge has been in that sample book since 1876. He corroborates Truitt in that it was the practice in Thomas Dolan & Company to take a specimen of each and every fabric made and place it in a book such as book "Samples to 1869, Thomas Dolan." He states in answer to Q. 48 that he saw Mr. Boot weaving the fabric like Ex. Dolan No. 3

upon the sample loom. Answers in XQ. 58 that he saw a fabric like Ex. No. 3 upon a sample loom used by Mr. Boot, and has cause to remember it from the fact that is was slow work in making fabrics like this exhibit.

Upon cross-examination (Rec., p. 184) the witness insists upon his statement in the direct that he distinctly remembers making the fabrics like Exhibit Dolan No. 3 at Dolan's about nine months after he entered their employ, and that Mr. Boot put the fabric on his loom within a very short time after he had been seen working upon his sample loom (page 187, Kibbe Record).

In an attempt to confuse the witness' identification of Exhibit Dolan No. 3, with the samples Nos. 28 and 30, the witness at cross-question 104 shows his thorough knowledge of the distinctive characters of the exhibits —the Exhibit Dolan No. 3 being made larger and with longer purls (x Q. 107).

Charles H. Salmon (Rec., p. 190) has been connected with the firm of Thomas Dolan & Co. since July 1, 1868, as general superintendent, and positively swears and knows the fabric like Ex. Dolan No. 3 containedin the book marked, "Samples to 1869 Thomas Dolan," manufactured in the room in which Henry Boot was the overseer, in the years 1868, 1869 and 1870. Recollects that two or three looms were running; that at one time three looms were running; it was manufactured in large quantities (Q. 7, p. 190) His duties in the factory of Thomas Dolan were to buy the yarns and see that the proper kinds of yarns were got for the various fabrics that were required to be made and see that the machines were kept in working order, and that they were producing the proper kind of work. He had to prepare the warps for the different kinds of knit fabrics that were manufactured by Thomas Dolan & Company; to see that they were put into the loom.

"10 Q. State whether or not you prepared the "warps for the fabric, "Exhibit Dolan No. 3."

"A. I did.

"11 Q. At whose request did you furnish the "warps for that fabric?

"A. Well, the general way was, when we got "our samples and decided to put it in the loom "we made so much of a certain stuff and laid "out the warps for it; prepared the yarn; se- "lected the loom for it.

"12 Q. So that your duties were such that of "necessity you knew all about the manufacture "of the fabric such as 'Exhibit Dolan No. 3'?

"Objected to as leading.

"A. Yes, sir.

"13 Q. Do you know who designed that fabric?

"A. Mr. Henry Boot is the man who designed "it and first put it on the sample loom; I recol- "lect distinctly when he had it on the loom, as "he called my particular attention to it as being "a nice thing.

"14 Q. Do you know for what purpose that "fabric was used?

"A. It was used for several articles. It was "used for hoods, hood tops, and I think there "were shawls made from it. I won't say posi- "tively. After the goods were taken from the "looms in good order I didn't follow the cutting "up." (Page 191.)

In this the witness distinctly corroborates the witnesses Jackson and Truitt. He remembers seeing the sample, "Exhibit Dolan No. 3," in the book, "Samples to 1869, Thomas Dolan," in 1870, when the book was made up, thus corroborating Truitt. The book of "Samples to 1869" he knows includes samples of fab-

rics that were made prior to that date and testifies that the book was marked "Samples to 1869, Thomas Dolan," when it was ordered to be made, and before samples were put into it after the book was received by Thomas Dolan. He also corroborates Truitt and Salmon in that it was necessary to refer to these samples to take them from the books for reference.

"25 Q. In whose charge were those sample "books?

"A. In charge of Mr. Henry A. Truitt.

"26 Q. Did Mr. Henry A. Truitt make up "these sample books or assist in making them "up?

"A. Yes, sir; he made them up.

"27 Q. Does that fabric 'Exhibit Dolan No. "3' occupy the same position in that book as it "did when you first saw it?

"A. Yes, sir.

"28 Q. Can you swear positively that fabric "such as 'Exhibit Dolan No. 3' was manu- "factured at the factory of Thomas Dolan prior "to 1870?

"A. I can; positively.

"29 Q. State whether or not the sample fabric, "Exhibit Dolan No. 3, is a piece of the original "fabric manufactured at that time.

"A. Yes, sir; it is.

"30 Q. Your experience in fabrics has been "such as to clearly enable you to tell whether "two fabrics are or are not of the same construc- "tion?

"A. Yes, sir."

He also testifies as to Henry Boot's death: (Rec. p. 148.)

At 48 x Q. the witness substantiates his direct-examination as follows:

"48 x Q. Is it your recollection that you saw "Mr. Henry Boot having the fabric like that "'Exhibit Dolan No. 3' on his sample loom and "weaving it thereon himself?

"A. Yes.

"49 x Q. And how soon after that, is it your "recollection, that the fabric was put on a regular "loom to be made?

"A. I cannot tell exactly, but very often after "a sample was produced we would have it on "the regular loom within a week. In the parti-"cular case in question it might have been one, "two, or perhaps three or four weeks.

"50 x Q. Are you in the habit of seeing the "looms in operation and the fabrics on them? I "refer particularly to the warp looms.

"A. Yes; fifty times a day.

Witness testifies in answer to question 52, that the mere fact that it was on a regular loom showed that it was made to go with the regular product of the mill and was sent to be sold. He heard the fabric, "Exhibit Dolan No. 3" spoken of as "Seaweed."

"87 x Q. You speak of knowing that the fab-"ric, 'Exhibit Dolan No. 3,' was made in the "room of which Henry Boot was foreman in the "years, 1868, 1869 and 1870. Is that of your "own knowledge?

"A. Yes.

"88 x Q. Will you swear positively that such "fabric—that is, fabric of precisely the same "construction—was made in Boot's room in 1868?

"A. I will.

* * * *

"90 x Q. Can you give me the name of any "man you ever saw manufacturing the fabric on "a warp loom?

"A. I can give you the name of Cornelius "Jackson, for one, and Edward McDevitt, for "another.

"91 x Q. Will you swear that you ever saw "Edward McDevitt making that fabric—Exhibit "Dolan No. 3—on a warp loom?

"A. I cannot swear positively, but I think I "have seen him do so.

"92 x Q. Can you swear positively that you "ever saw Jackson do it?

"A. Yes; I can."

Thus corroborating Jackson's testimony, he also distinguishes Exhibit Dolan No. 3 from the samples of 28 and 30 of 144 x Q. by saying: "We called this 'Seaweed' (referring to Exhibit Dolan No. 3) and the other was of precisely the same construction, except the manner of joining together to form the meshes."

He corroborates the other witnesses in that Henry Boot designed samples Nos. 28 and 30.

THOMAS DOLAN, (Rec. p. 207) called on behalf of the defendants, states that he is one of the defendants, 48 years of age; that he has been engaged in the manufacture of knitting fabrics about 21 years, and in answer to the 5th question says:

"Examine the fabric in book, 'Samples to 1869, "Thomas Dolan,' marked 'Exhibit Dolan No. 3,' "and state whether or not such a fabric was "ever manufactured at your factory; and if so, "when first?

"A. We did manufacture such a fabric prior "to 1870, but I cannot recall the date; about "1866 or 1867 we first made it.

"6 Q. How are you able to fix the date as be- "ing prior to 1870 that you manfactured such a "fabric as 'Exhibit No. 3,' at your factory?

"A. In a variety of ways; the most positive "is that up to that time we had kept all our "samples on files, and the samples began to ac- "cumulate. Our method has been to affix a tag "to each sample like many in the book, and this "tag had the date and number of the sample, "the style number of the article the fabric was "used for. There came to be quite an accumu- "lation of these samples in 1869, and I instructed "Mr. Truitt, at that time manager or assistant "in this department, to get a book or a series of "blank books and take each of the old samples, "place them in a book properly marked—that "the samples would be secure and convenient "for reference—and according to those instruc- "tions the samples were placed in that book, "and the 'Exhibit No. 3' is one of the lot."

He corroborates the other witnesses' statement that Henry Boot designed Exhibit Dolan No. 3. He saw such a fabric like Exhibit No. 3 upon the loom being manufactured and remembers McDevitt as one of those who operated the loom upon which the fabric was being made. They probably made these goods for a season running from July until November. It was made in considerable quantities. "The original of Exhibit Dolan No. 3 was made for Nubias, and we subsequently made large quantities of it for trimmings for hoods, for children's coats, and a variety of things of that kind. It was made of identically the same construction as 'Exhibit No. 3,' but of finer fabric and softer yarns" (p. 20).

Upon re-cross-examination (Rec. p. 212) Mr. Dolan states that Exhibit Dolan No. 3, in the book "Samples 1869, Thomas Dolan," fully show the double pillared fabrics made by Thomas Dolan for the purpose of making the same up into Nubias.

Mary W. Kimball (Rec. p. 218) states that she is 39 years of age; forelady for Mr. Truitt and resides at Kensington, Philadelphia. Went in the employ of Mr. Dolan in 1865, first as trimmer and cutter and gradually worked herself up until she became forelady of the department. She was cutter for six years. She was located in the wareroom of Thomas Dolan's factory and her work consisted in cutting, trimming and tying up work, receiving it and packing it away—handling all the work that came from the weaving room. All the material that was manufactured upon the looms in Dolan's factory was brought to the wareroom where she was located. She "got" Ex. Dolan No. 3 in the "Samples to 1869, Thomas Dolan," in both light and heavy weight for trimming at Mr. Dolan's factory, as much as 12 or 14 years ago. (The deposition having been taken in 1883 this would bring it back to the year 1869.) She remembers handling it for a while and then it went away and came back again, and after she came back she made the remark that it looked "like olden "times to see that stuff back again." It was about three or four years after she went into his employ that she saw the fabric like Ex. Dolan No. 3 for the first time.

The first time she handled it it was used as trimmings for hoods; she remembers that there was a "lot "of it;" quite a number of different articles were made.

Being asked to give the names upon cross-examination, of those who worked with her in the wareroom she said (30 Q., p. 220):

> "I was the only trimmer and cutter at that "time. There were a number of young ladies in "the wareroom at that time as sewers, Miss "Boyd, Miss Gamble and some others—and her- "self, giving the reason for the difficulty in "tracing the other women who worked with her "—a great many have been married since; some "have died."

She remembers trimming hoods with Exhibits, Seaweed Nos. 28 and 30, and also with No. 3, and remembers distinctly that she trimmed hoods with these trimmings in 1867 and 1868.

She was asked on re-direct examination in what condition the Exhibit Dolan No. 3 came to her in the wareroom ; she states, p. 224, Q. 88 : "Laid out flat and smooth ; large bundles of it." It being from four to five chains in width. She has a very distinct recollection and positively swears that Exhibit Dolan No. 3 was made at Dolan's factory 12 or 14 years ago (Re-Cross Examination, 107, Q. p. 226) and does know positively that the fabric with the double pillar such as Exhibit Dolan No. 3, was made at Dolan's factory 12 or 14 years ago

William A. Stewart (Rec. p. 226) was 37 years old when he was examined in 1883; was with William Mann, the stationer and blank book manufacturer, for nearly 20 years.

In the books of William Mann appear entries, the description of which and the marks of which correspond to the book "Samples to 1869, Thomas Dolan," under date of August 27th, 1869. An entry in the order book that they were to be marked "Samples to 1869," with the name Thomas Dolan. Testifies that the book "Samples to 1869, Thomas Dolan," is in accordance with the entries in the order book.

The book was delivered August 27th, 1867, having been ordered August 18, 1869, and the books show the fact that they were actually delivered to Mr. Dolan.

George Beck, (Rec. p. 230) a witness called on behalf of defendants, was 65 years old at the time of giving his deposition, and resided in Philadelphia, and was then working on a double ribbed machine in a factory in Philadelphia.

He went to work for Thomas Dolan the first week he landed in America, in October, 1863, and worked for him continuously until December, 1872. He landed in

this country on the 21st of October, 1863; went to Thomas Dolan's factory and stayed there right along until 1872, and only left then because they hired girls in men's places.

He knows nothing of the book "Samples to 1869, Thomas Dolan," but saw fabrics like Exhibit Dolan No. 3, made at Dolan's factory 12 or 13 years ago; that is, during the years 1870 or 1871.

He saw Cornelius Jackson working it on the loom at that time, and states it was designed by Henry Boot.

He was asked in 19 Q. as follows:

"Can you swear positively that fabric such as "'Exhibit Dolan No. 3,' was made at the factory "of Thomas Dolan before you left there in De- "cember, 1872?

"Objected to as leading.

"A. Yes, it was before I left.

"20 Q. Do you know what became of this "fabric after it left the room?

"A. No, sir; only that it was taken to the "wareroom.

"21 Q. Did you make an affidavit for me in "this case on December 11, 1881?

"A. Yes."

Edward McDevitt, 45 years old and by occupation a warper, had worked with Thomas Dolan & Company since 1865, and was employed in the warp-frame room operating the warp loom (Rec., p. 244).

Henry Boot was then the foreman of the warp loom department, in which department he operated a warp loom. He saw work like "Exhibit Dolan No. 3" made at Thomas Dolan's factory in 1868. Saw Cornelius Jackson working fabrics such as Exhibit Dolan No. 3 upon a loom; McDevitt operated a loom in that factory for seven years. Stopped operating a warp loom when Mr. Dolan made

a change from men to girl operators. He swears positively that prior to that time he saw fabric like Exhibit Dolan No. 3 at Dolan's factory. Cornelius Jackson was the only one he remembers who made this material upon the loom.

George McDevitt was 42 years old and worked with Dolan prior to September 1st, 1861, on which day he left his employ (Rec., p. 244).

Has been a knitter or weaver all his life. He saw fabric of which Exhibit Dolan No. 3 in the book "Samples to 1869, all made at the mtll previous to leaving there and adds, page 245: "As was also the majority of the patterns laying before me here on the same page with No. 3."

> "9 Q. Then fabric of the same construction as
> "'Exhibit Dolan No. 3,' and also the several
> "other patterns on the same page were made at
> "Dolan's factory before you left there, in Sep-
> "tember, 1868?
> "A. Yes, sir."

Thinks Henry Boot wove that fabric; he remembers the pattern distictly "Exhibit Dolan No. 3." because it was a slow working pattern. He, too, is able to distinguish Sample No. 3, from the other samples 28 and 30.

George Mousley (Rec., p. 252), is 46 years of age, and entered the employ of Thomas Dolan in 1861 or 1862 and left his employ in 1870. Is a knitter by trade and worked for some years as a journeyman and the last three years as foreman in Dolan's factory.

He saw fabric like Exhibit Dolan No. 3, in the warp room of Dolan's factory in 1866 and 1868; after he became foreman of the ribbed machine department and swears positively that he saw the fabric manufactured there similar to the fabric Exhibit Dolan No. 3, prior to 1870, upon a rotary warp loom in the warp room

and that such fabric was designed by Henry Boot. He remembers that Mr. Boot asked him how he liked the style of the fabric. Remembers that the pattern was used for several weeks and cut into opera hoods, Nubias, shawls, etc.

This is the positive evidence of ten witnesses, one of whom—Jackson—made fabric like Exhibit No. 3; another of whom—Mary Kimball—cut the fabric prior to 1870, and their evidence is substantiated by the sworn statements of the other witnesses to the fact that they either saw Jackson make it or saw it made at Dolan's factory prior to 1870. Truitt, who, pursuant to Dolan's orders, made up the book "Samples of 1869, Thomas Dolan", distinctly remembers it. Mr. Dolan remembers it, Salmon remembers it; and the fact that such a book was made in 1869 is corroborated by the books of the stationer who made the sample book for Mr. Dolan. Here is proof positive that a fabric of which the Exhibit Dolan No. 3, is a sample, was made prior to 1870.

To controvert the force of the evidence given by these witnesses complainants called more than 20 witnesses. Their testimony is not directly in contradiction of that of the appellants' witnesses. None of these witnesses positively swear that this work was not done at Thomas Dolan & Company's factory, but each of them state that he did not see the work done and that in his opinion it was not done; and none are willing to swear that it was not done. Thus:

John Mitchell, 63 years of age worked for Thomas Dolan about 1860 and again in 1868. His duty was to work a warp machine. In answer to question put to him by complainant's counsel he stated that he was familiar with the various designs of fabrics or knit goods made upon these various machines; being led by Complainant's counsel he answered as follows (Rec., p. 52):

"9 Q. If any new design or fabric was pro-
"duced on any of those machines do you think
"you would have noticed it?
"A. Yes, sir.
"10 Q. Why?
"A. If it is a good article it generally makes
"an impression upon us."

Mitchell, however, in no way contradicts any of the witnesses produced by the appellants. His evidence is merely his opinion.

Warren P. Jennings, one of the complainants, called in his own behalf states that he examined the book, "Samples to 1869, Thomas Dolan," and looked at Exhibit Dolan No. 3, and saw that it had the "appearance" of having had a red sample under it (Rec., p. 52).

He says, page 57:

"I saw pieces of red sticking to it and I saw
"gum that did not correspond with this sample.
"I mean that the signs of gum on the book
"showed traces of another sample.
"8 Q. Were those red pieces at that time clear-
"ly apparent or faintly?
"A. I would not have seen them except I was
"looking at this sample very critically.
"9 Q. To what extent did you observe these red
"pieces at that time?
"A. There were quite a number of small frag-
"ments pretty evenly distributed over the space
"which the sample occupied, where you could
"see the paper."

In view of the fact that it had appeared by appellants' own testimony that the sample, Exhibit Dolan No. 3, had been taken from the book and replaced, the fact that the mucilage shows traces of having been renewed is of no weight in this answer.

Complainants charge the appellants with having replaced this sample and attempt to substantiate this charge by the fact that in and about the space occupied by Exhibit Dolan No. 3 there are traces of red thread. An inspection of the book "Samples to 1869," shows that on the page opposite to that on which Exhibit Dolan No. 3 is pasted, there are samples containing red yarn, and the sample which would naturally cover Exhibit Dolan No. 3 contains red yarn, and when the book is closed this red yarn comes directly over the space where these fibres are supposed to be—thus amply explaining the presence of any red fibres that may be there.

Samuel R. Betts' evidence and also that of Dr. T. O'Connor Sloane are amply answered by the above explanation.

Conyers Button, called as a witness on behalf of complainants, to contradict the evidence of appellants' witnesses as to the manufacture of fabric like Exhibit Dolan No. 3 merely states that he did not see such goods upon the market, and thinks he should have seen them had they been in the Philadelphia market. He admits however that it is impossible for him to state when a knitted fabric was introduced into the market from 1869 to 1878, and admits at 25 XQ that he could not identify knitted fabrics shown to him as being made of a certain date. He admits that he cannot tell every fabric that was made in 1878, nine years after fabrics like Ex. Dolan No. 3 were made; nor could he tell every knitted fabric whose design was more or less novel in 1878. He admits that he cannot tell every novel stitch that came out for one year (Q. 32) and knows absolutely nothing as to the stitches made by Thomas Dolan at any time (Rec., p. 63).

Cornelius Jackson, one of appellants' witnesses, re-

called by complainants for further examinations, states nothing to contradict or in any way affect the evidence given by him as appellants' witness (Rec., p. 68).

James Phipps is a saloon keeper in Philadelphia. Was in the knitting business about 38 years and probably never was in Dolan & Company's factory; states that he did not see fabric of a like construction as Exhibit Dolan No. 3 until he saw it in what he calls the Jenning's Nubia. Being asked by complainant's counsel whether he went through the stores of Philadelphia for the purpose of seeing what new patterns of goods had appeared, answers: (Page 73, Q. 6) "*What I could get into; some I could not get into*" (Rec., p. 72).

He admits in cross-question 20 that he cannot say that Thomas Dolan did not prior to 1869 make fabrics like Exhibit Dolan No. 3.

His re-derect examination and re-cross examination are produced *in extenso*, to show the character of this witness.

"x Q. 20. You cannot swear can you, that "Thomas Dolan and Co., did not, prior to 1869, "make such a knitted fabric and put it on the "market to a more or less extent?

"A. No, I can't say.

"21 Re-d Q. But, as already stated. you do "not believe that it could have been sold in the "Philadelphia market at that time without "you having been in some way informed of it?

"Objected to, &c.

"A. No., I don't.

"22 Re-x Q. Then you would have informa- "tion of every knitted frbric that has been "put on the market by Thomas Dolan & Co., "from 1866 to the date you went out of busi- "ness?

"Objected to, &c.

"A. Well, I would have all I could get hold "of. There might be some things I would not "get. All we could see in the market we got.

"23 Re-x Q. Would you swear that this (coun- "sel pointed to the first sample in the book "'Samples to 1869, Thomas Dolan') was put on "the market by Thomas Dolan or not?

"A. No.

"24 Re-x Q. Pick out in that book all the "samples you can swear were or were not put "on the market by Thomas Dolan?

"A. I would not pick out any and swear.

"25 Re-x Q. Can you swear that all those "samples in that book were or were not on the "market?

"A. No, I can't.

"26 Re-x Q. How many of them can you "swear to?

"A. I could not swear to any of them.

"27 Re-d Q. Have you examined any single "sample in the book before you besides the "samples marked 'Exhibit Dolan No. 3' for the "purpose of seeing how it was constructed?

"Objected to.

"A. No.

"28 Re-re-x Q. Please examine every one of "the samples in that book and then answer my "question in reference to them?

"A. I have examined them, and I say I can't "answer that."

William Radford, called as a witness on behalf of complainants, came to this country in March, 1864, and was living in England for 12 years. Was employed at Thomas Dolan's for about three years between 1869 and 1872; he is also called to show that fabric like Exhibit Dolan No. 3 was not made at Dolan's while he was

there and the following argument between complainants' counsel and the witness takes place (Rec. p. 75):

"17 Q. Look at the fabric marked Exhibit "Dolan No. 3 in book marked 'Samples to 1869, "Thomas Dolan,' now before you, and state "whether you understand its construction?

"A. I understand this fabric in this way, but "not in the way it is tied together; this is the "fabric I made.

"18 Q. State whether you ever made any fab- "ric exactly of the same construction as the "piece of fabric now lying before you?

"A. No.

"19 Q. What do you mean by saying 'This is "the fabric I made'?

"A. This tie that goes together—that holds "the two together.

"20 Q. You mean to say that you made the "tie that holds the two together?

"Objected to.

"A. No.

"21 Q. Now, what did you make and what "did you not make?

"Objected to, etc.

"A. I made this here fabric in straight trim- "mings—little trimmings; I did not make it "tied together; I made it in straight trimmings "—small trimmings.

"22 Q. When you answered the 17th ques- "tion, which is now read to you, together with "your answer thereto, did you, in the last "sentence of your answer, refer to the whole "fabric now lying before you or only to parts of "that fabric?

"A. I never made this the same fabric as it is "now; I made it in little narrow trimmings not "tied together.

"23 Q. What is the difference between the "fabric you made and the fabric which is now "lying before you?

"A. The difference is: this is tied together "every inch, and mine was made in straight "trimmings.

"24 Q. Have you ever seen Jackson at work "in the room where you were together employed "by Dolan?

"A. Yes.

"25 Q. How often?

"A. I can't say; I could say a hundred times.

"26 Q. Did you ever see Jackson work any "fabric of the same construction as the fabric "'Exhibit Dolan No. 3' now lying before you?

"A. No; I saw him make some in straight "little trimmings, same as I made it.

"27 Q. That was without being tied together?

"Objected to.

"A. Yes, sir; without being tied together. "some straight little trimmings; that is all I saw;

"28 Q. Had you occasion to see what kinds of "fabrics the other men who were employed in "the same room with you were making on their "loom?

"A. No, sir.

"29 Q. You never saw what they were making "on their looms?

"A. I saw at different times what they was "making on their looms; not all the time."

Upon cross-examination, however, he admits that he cannot swear that fabrics similar to Exhibit Dolan No. 3 were not made in Dolan's factory while he was there.

Henry Henson, called for the same purpose by complainants, also admits that he cannot say that fabric similar to Exhibit Dolan No. 3 was not made while he was in Dolan's employ; he went into his employ in 1866 (Rec. p. 79).

Thomas Langham is 51 years old; was employed by Thomas Dolan from 1860 up to about 1876. He never saw any fabric of the construction like Exhibit Dolan No. 3 at Dolan's factory while was there (Rec. p. 80).

At 96, 97 and 98 x-Q. he states that he cannot swear that fabric similar to Exhibit Dolan No. 3 was not made in Thomas Dolan's factory in the year 1870:

"96 x-Q. Can you swear that fabric similar to
"Exhibit Dolan No. 3 was not made in Thomas
"Dolan's factory in the year 1870?
"A. I can swear that if it was made I never
"saw it."
"97 x Q. Question repeated.
"A. I don't swear to what other people was
"doing; I swear I never saw it.
"98 x Q. Question repeated.
"A. I won't swear to anything of that kind."

Being re directed by complainants' counsel he admits that he has the worst memory in the world on dates unless there be something important like the Centennial year (Re-D. Q. 152).

That he knows absolutely nothing as to the samples or patterns in the books of Thomas Dolan shown by the following question and answer:

"166 Re-D. Q. I now show you a book marked
"on its face 'Samples 1871, Thomas Dolan', and
"on its back 'Samples to 1869, Thomas Dolan.'
"Can you point out any samples therein which
"have been made or of the construction of
"which fabric has been made at Thomas Dolan's
"factory while you were there?

"A. I won't swear them patterns were made "at Thomas Dolan's. I cannot swear where "those patterns was made. I had no control "over the patterns like those in this book.

"It is a weave loom as far as I have got. Now "we come to the warp. There's the whole fabric, "but the coloring's different."

David Briggs (Rec., p. 96), 51 years old, was employed by Thomas Dolan from 1877 to 1879. The force of his deposition is in the following questions and answers:

"24 Q. Have you ever seen any nubias or "other articles made of the construction of 'Ex-"hibit Dolan No. 3', a double pillar, having "loops on both sides, the pillars or loops being "joined so as to form a net, during the years "from 1862 to 1872?

"A. No, sir.

"25 Q. Could articles of the construction of "the double pillar fabric, Exhibt Dolan No. 3, "be sold in the Philadelphia market in consid-"erable quantities during any of the years from "1862–1872 without your seeing them or know-"ing of their existence?

"A. I believe not.

"26 Q. Is the piece before you, marked Ex-"hibit Dolan No. 3, a piece with double pillars "or with single pillars?

"A. It is a double pillar. I didn't see that "before. I thought it was a single pillar by "looking at the front of it, but on looking "through it find it is a double. I was swearing "from there being a single pillar; I was wrong."

He is a most willing and entirely too positive a witness for the complainants; thus he deliberately states that it would have been impossible at the time he was at

Dolan & Company to work a fabric similar to Exhibit Dolan No. 3 without his knowing, unless they went in the middle of the night and worked all night and cleared it away before he got there in the morning (p. 152, Q. 51). In the very next question, however, he admits that it is merely a question of belief with him that he saw all the fabrics that were made.

George H. Henhoeffer (Rec., p. 104), worked for Thomas Dolan from 1862 to 1871; he never made a fabric like Exhibit Dolan No. 3; that he has not even positive knowledge as to that, for when asked in Q 20 whether he can swear positively, he answers he "believes he never made it." He practically does not know whether the fabric was or was not made in Dolan's factory while he was there, and is not even positive (Q. 23) that it could not be made alongside of him and he not know it. He admits at 25 x-Q. that the fabric like Exhibit Dolan No. 3 could be made in the warp rooms of Dolan's factory and he know nothing about it.

William Ward (Rec., p. 107), a witness called for the same purpose. The gist of his testimony is that he never saw a fabric like Exhibit Dolan No. 3 while he was with Dolan & Co.; also that he never made it. He, however, admits that he does not know whether Exhibit Dolan No. 3 was made at Dolan & Company's or not (x-Q. 15, page 109).

James Rose (Rec., p. 109), 61 years old, commenced to work for Dolan & Company in 1866 and worked there until 1872. He never saw any fabric of the construction of Exhibit Dolan No. 3 in Philadelphia during the years 1866 to 1872, nor did he ever see such fabric made at Thomas Dolan's factory. Upon cross-examination he admits he does not know whether it was made there or not. He admits, however (x Q. 15), that there was very little opportunity for him to go through Dolan's factory or see what was going on there.

Upon re-direct examination he further states that there is nothing peculiar in the appearance of Exhibit Dolan No. 3, which should fasten such a fabric in his mind.

Edward M. Townsend (Rec., p. 113) a member of the firm of Townsend & Yale, called on behalf of the complainants, admits that he does not understand the construction of Exhibit Dolan No. 3 in the book of "Samples to 1869, Thomas Dolan." He knows that it is a double pillar, and that is about all. He cannot swear and has absolutely no recollection as to whether or not he received fabrics like Exhibit Dolan No. 3 from Thomas Dolan in the course of business from 1864 to 1871; he admits upon cross-examination (x-Q. 17) that Exhibit Dolan No. 3 might have been considered an unsuccessful stitch, and passed entirely from his mind:

> "18 x-Q. In that case you might yourself at "that time have considered it not a very suc- "cessful stitch or style; it might then have "passed from your mind, and upon being "brought forward again have had a great sale, "and then you wonder how you could, if you "had seen it before, consider it anything but "successful?
>
> "A. I could say 'yes' to that. It might have "happened. A stitch is very apt to grow upon "your sympathy from the manner in which it "sells.
>
> "19 x Q. Take the facts as I state them, that "Thomas Dolan & Co., might have sent you "Nubias, &c., made with this stitch and style "of construction, and the effect have been with "these fabrics such as I have stated in my last "question, and then Jennings & Co. bring it out "again with great success, would you have any "recollection of Dolan's consignment any more

"than if the bare question had been asked you "without these facts?

"A. In this particular fabric I should not have "been likely to have remembered it, or I do not "remember it."

William Newton (Rec., p. 116), 52 years old, worked for Thomas Dolan from 1866 to 1868. He did not make a fabric like Exhibit Dolan No. 3, while he was at Dolan's, nor did he see it made.

A perusal of his evidence shows that this is mere speculation on his part.

Henry C. Yale (Rec., p. 118), called as a witness on behalf of complainant, does not know, and has no recollection as to whether or not fabrics like Exhibit Dolan No. 3 were sold by him prior to the time when such goods were brought out by Messrs. Jennings & Son about the year 1878.

Complainants re-called George Beck (Rec., p. 136), who had been called by appellants and practically got him to contradict his evidence given on behalf of the appellants. He makes himself out to be either a perjurer or a fool, and whatever view is taken of his situation, the fact remains that there is cause to doubt the truth of the story he states as to complainants' witnesses. He has two contradictory sworn statements in this record; one of them is corroborated by the positive evidence of reputable witnesses; his other story is not even corroborated by the evidence of complainants' witnesses; not one of complainant's witnesses can testify that fabric like Exhibit Dolan No. 3 was not made before 1872; he pretends that he testifies solely to what Jackson told him; if as the result of a mere conversation he could give positive evidence as to what happened when he was at Dolan's and evidence which is supported by all of complainant's witnesses and the circumstances of

the case, that he, having been substantiated by all witnesses for complainants, and pretending to have done this entirely in recollection of what Jackson told him, that he does not remember what was done at Dolan's while he was there.

Perhaps the most charitable explanation of this and the peculiar conduct of complainants' counsel in this matter, is given in the following question and answer:

> "98 Re-D. Q. Is not the fact that your health
> "is in such bad condition that you don't know
> "what you are saying or what you have said?
> "A. I can't remember everything I say, nor
> "I can't remember half."

Martin Landenberger (Rec., p. 144) is 64 years old. He does not recollect having seen fabrics of the construction of Exhibit Dolan No. 3, between the years 1864 and 1870. That his recollection is poor and his evidence totally unreliable is shown by the cross-examination of the witness:

> "11 x Q. Might not fabric similar to 'Exhibit
> "Dolan No. 3' have been on the Philadelphia
> "market in 1866?
> "A. I don't know of it being on the market.
> "12 x Q. When and how did you first see it,
> "to your knowledge?
> "A. It was brought to my factory. I can't
> "say the year, but it was the time that the
> "goods were first put on the market by
> "Jennings.
> "13 x Q. Was that in 1869 or 1870?
> "A. I don't recollect. I don't know what
> "year it was in.
> "14 x Q. Was it before or after 1876?
> "A. It was certainly before 1876, I think. I
> "don't know, yet I could not be certain about
> "it. I have no dates to go by.

"15 x Q. Might you not have seen fabric sim-
"ilar to 'Exhibit Dolan No. 3' prior to 1870,
"supposing said fabric not to have been what
"might be called a successful fabric at that
"time, and have ceased to remember the fact
"at this day?

"A. I don't remember to have seen anything
"like—if I once see a thing I can generally carry
"it. It's possible that anything might slide by,
"but I don't recollect seeing it before Jennings'
"Nubia came out.

"16 x Q. Then the fact is that you don't
"recollect whether it was or was not on the
"market?

"A. I do not.

"16 Re-d. Q. To the best of your recollection
"the fabric was not in the market before 1870?

"A. It was not.

"Re-x Q. Is your memory about 'Exhibit
"Dolan No. 3'—that is, of not having seen it
"prior to 1870—as good as your memory as to
"the date when you first saw it?

"A. I don't know how to answer that."

A fair synopsis of this evidence would be that the complainants contend that fabrics like Ex. Dolan No. 3 were not made at Dolan's factory prior to 1870 and bring in support of that contention some of the men who worked at Dolan's factory prior to 1870. None of them can swear positively that it was not made there, and merely give their opinion and recollection. In support of that contention is also the fact that in a space covered by Exhibit Dolan No. 3, can be found red filaments, which, complainants contend, came there from some sample which was replaced by said Exhibit Dolan No. 3. This is amply explained from the fact that these filaments are in all reason part of the fibre of the sample immediately covering Ex-

hibit Dolan No. 3. But, apart from this, the Court can as plainly see the sample as any one. No expert is needed; Truitt, Jackson, Dolan and Salmon all swear positively that the sample is in the same position and general condition, and that it is the same sample as when they saw it first. Mr. Truitt testified that he removed it once in 1879 to reproduce it, and then returned it to its place. The witnesses, Truitt, Dolan and Salmon, are men of the very highest standing in the community in which they reside, and mere inferential evidence should not be allowed to weigh as proving their evidence to be false and themselves to be perjurers.

Appellants in support of their contention brought men who saw fabric like sample No. 3 made at Dolan & Co.'s, an employee who cut the pieces like this sample into nubias and trimmings, and the man who pasted the samples in the book and who has used it since, proof positive on behalf of complainants, which is not met by the evidence introduced by the appellees. Where there is positive evidence of the occurrence of the fact, and witnesses who corroborate this event, such testimony must prevail over mere speculation, opinions, matters of belief, or ignorance.

The testimony of one set of witnesses being to facts within their knowledge, while that of the other is merely the evidence of men who did not remember and did not know, but admit that Exhibit Dolan No. 3 may have been made without their knowing, and whose evidence mainly consists of arguments advanced why they should have known when they admit they might not have known, and it not appearing that the manufacture of Exhibit Dolan No. 3 was at all a matter that would come within their ordinary knowledge, can only lead to one conclusion and that is a substantiation of defendant's contention as to the manufacture of Exhibit Dolan No. 3.

A similar state of facts was presented to this Court

in the suit of Bené *v.* Jeantet, 129 U. S., 683. In that suit the testimony of two experts was conflicting, the evidence of one being to facts within his knowledge, which tended to show that there was no infringement; while that of the other, who was called to establish an infringement, was largely the assertion of a theory and presentation of arguments to show that facts testified to by the other witness could not exist. It was held that this was not a sufficient reply to defendant's claim of non-infringement. So here it must be held where appellants assert by positive evidence of men and women who made and cut nubias of the fabric of which Exhibit Dolan No. 3 is a sample, prior to 1870, that the contention is not met by the speculation and arguments of appellees' witnesses and that appellants have well carried the burden of their contention.

The appellant, Mr. Thomas Dolan, who swears in the most positive manner as to the manufacture of fabric like the sample "Exhibit Dolan No. 3" at his factory during the period from 1865 to 1870, is one of the largest manufacturers in the world.

I venture the assertion that there is not a man to be found either in the business or social world, who would think of questioning his veracity. Of him even Mr. Yale, one of the appellee's witnesses, says (Record, p. 120):

> "I should believe that Mr. Dolan if he swore "that he consigned a certain kind of goods that "he would swear according to the best of his "knowledge and belief, and should not think "of doubting his veracity."

Nor would anyone else. Surely the positive testimony of a man who stands pre-eminent in the world, is not to be overcome by the negative testimony of hundreds of witnesses, much less twenty witnesses who were in no position to know and finally had to admit that precisely what Mr. Dolan and his associates say

was done, could have been done without their knowing it.

I submit that the prior manufacture, use and sale of the exact fabric of the patent in suit is abundantly established.

Positive evidence of witnesses as to the existence of prior devices must outweigh merely negative proof.

> Sayles *v.* Chicago & Northwestern Railway Co., 4 Fisher, 584.

Although in that case the Court did not construe the evidence there produced as of such a nature as to warrant it in upsetting the patent. Although when the defendant's evidence is fully up to the standard the novelty of the invention described is successfully impugned.

> Doubleday *v.* Beatty, 11 F. R., 729.

For examples where positive evidence of witnesses as to alleged prior use defeated the patent, see

> Collender *v.* Griffith & Co., 18 F. Me. R., 110, 117.
>
> Proctor *v.* Brill, 4 F. R., 415.

## The Accounting.

The exceptions taken by appellants to the Master's report insisted upon here were two-fold:

1st. To the refusal of the Master that Thomas Dolan & Company made an accounting for $2785\frac{6}{12}$ dozen Nubias which the master found had been sold by the appellants.

The second exception is that the appellees had not established a uniform license fee of fifty cents a dozen as reported by the Master.

As to the first exception there can be no argument but that if the complainants recover the money due them under one infringement from one of the parties, they cannot recover the same amount from another sued for the same infringement; in other words, the appellees cannot recover double profits and damages for one infringement.

> "Where two suits are pending for infringe-
> " ment, one against the maker of an infringing
> " article and the other against the seller, account-
> " ing should only be ordered in the case against
> " the maker."
>
> Harper *v.* Cooper, 5th. Banning & Arden, 50.

As to the second exception: The Master finds (p. 288) that the complainant had established a license fee of fifty cents per dozen for the Nubias made and sold as aforesaid, which must be the measure of damages herein. This alleged license fee complainants attempt to establish by two agreements of license—the Marriott & Crine License (p. 290), and Conyers' Button License (p. 292).

The Marriott & Crine License covers Design Letters Patent No. 10,388; Design Letters Patent No. 10,448; and Letters Patent No. 218,032.

The license fee is regulated as follows:

> (P. 290.) "The parties of the second part,
> " promise covenant, and agree as a condition of
> " this license to pay to the parties of the first
> " part as a royalty or patent fee the sum of fifty
> "(50) cents for each and every dozen of such
> " Nubias or scarfs made under said three letters
> " patent, commencing from the 1st day of April,
> " 1880."

The Conyers' Button license is for the same three let-

ters patent: The royalty to be paid under that license was the following:

> "The parties of the second part promise, cove-
> "nant and agree as a condition of this license to
> "pay to the parties of the first part as a royalty
> "or patent fee the sum of twelve and a half (12½)
> "cents per pound on all such articles made of
> "either cotton, wool or worsted, and fourteen
> "(14) cents per pound on all such articles partly
> "made of silk and made by them under said
> "three letters patent, or either of them, dating
> "and commencing from the first day of January,
> "1880" (p. 292).

And the complainant, A. G. Jennings, being examined in his own behalf, states (p. 285):

> "The royalty of 50 cents per dozen nubias
> "called for in the agreement with Marriott has
> "been paid by him on each kind of nubias—
> "double pillar and single pillar—made by him
> "under that license. I also granted licenses to
> "other persons under the patent in question,
> "French & Ward, of Massachusetts, Conyers,
> "Button & Co., of Pennsylvania. *They also*
> "*paid me a royalty which was intended to aver-*
> "*age 50 cents per dozen nubias.* They paid by
> "the pound; they paid 10 cents per pound, and
> "the nubias averaged from 3½ to 6 pounds in
> "weight per dozen. I believe my royalty actu-
> "ally amounted to 50 cents per dozen nubias
> "under these agreements."

"Under these agreements" the licensees had the right and benefit to manufacture under three letters patent—two of which only are sued on in this suit and upon one of which two the complainant did not prevail. The sole royalty that appellees can re-

cover from appellants is for the infringement of the Letters Patent No. 218,032. No license fee has been proven for this patent. The patent is included with two others, which as far as the licensees are concerned, may be to them of greater value than the fabric patent. The benefit derived from the license to the licensees covers the use of three letters patent, and the master in his report makes these appellants liable to pay a royalty for one patent which the complainants have attempted to prove existed for three patents; in other words, for the infringement of Letters Patent No. 218,032 defendants are compelled by the Master to pay a royalty equal to that which is paid by the licensees, and the complainants to have the benefit not only of Letters Patent No. 218,032, but also of the Letters Patent Nos. 10,448 and 10,338.

It is contended by appellants that no fixed royalty or license fee has been proven by the appellees. The only evidence produced by appellees are two licenses issued within three months of each other in 1880, which on their face are for different rates for one fabric, including the three patents or any of them, and which one of the patentees explains by stating that it was to average the rates so as to make a royalty of fifty cents for the use of the three patents. No other royalty or license fee is proved and it is contended that these two agreements do not establish any fee as to the patent in suit. An agreement concerning compensation for the use of a patented machine where the charge may be fixed at the pleasure of the owner of the patent, cannot be received as evidence of the value of the improvement patented so as to bind others who have no such agreement.

Rude *v.* Westcott, 130 U. S., 152,162.

It is undoubtedly true that where there has been such a number of sales by a patentee of licenses to make, use and sell his patents, so as to establish a regular price

for a license, that price may be taken as a measure for damages against infringement.

Rude *v.* Westcott, *supra*, and cases there cited.

In order that royalty may be accepted as a measure of damages against an infringer who is a stranger to the license establishing it, it must be paid or secured before the infringement complained of; it must be paid by such a number of persons as to indicate a general acquiescence in its reasonableness by those who have occasion to use the invention and it must be uniform at the places where the licenses are issued. Actual damages must be calculated, not imagined, and an arithmetical calculation cannot be made without certain pata on which to make it.

Rude *v.* Westcott, *supra.*
New York *v.* Ranson, 23 How., 487, 488.

With none of these conditions do the licenses relied upon by the complainant comply, and upon that point alone it is contended that the Court below erred in approving the Master's report herein, and that in the absence of other proof as to a fixed license fee nominal damages alone should have been reported. It is further urged that the license fee that was proven having covered three patents and infringement having been only proved of one of these patents, nominal damages should have reported. Thus, where a patent had two claims and the plaintiff had an established license fee of ten dollars for the use of what was covered by the first claim, and fifty dollars for what was covered by both claims, and the first claim turned out to be void, it was held that no measure of damages as in the second claim was in evidence and that nominal damages only could be recovered.

Proctor *v.* Brill, 4 F. R., 415.

Where a license fee is appurtenant to a patent having a number of claims, the defendants infringe only one, such license fee cannot be taken as a measure of damages.

Wooster *v.* Simonson, 16 F. R., 680.

A license fee or royalty must relate exclusively to the patent claimed to be infringed. License fees for that and another patent rendered together would establish a royalty as to their patent. The royalty must be for the use of the identical patent in controversy, and for that alone, in order to fix the market value and render it the established license fee.

Adams *v.* Bellaire Stamping Co., 36 O. G., 567.

It is respectfully submitted that the decree of the Circuit Court should be dismissed.

JOHN R. BENNETT,
Counsel for Appellants.

Supreme Court U. S.
FILED.
MAR 4 1891
JAMES H. McKENNEY,
CLERK

# Supreme Court of the United States,

OCTOBER TERM, 1890.

**Nos. 265 and 266.**

HENRY R. KIBBE ET AL.,
*Appellants,*
*vs.*
ABRAHAM G. JENNINGS.

THOMAS DOLAN,
*Appellant,*
*vs.*
ABRAHAM G. JENNINGS.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

## BRIEF ON BEHALF OF THE APPELLEE.

ARTHUR v. BRIESEN AND
ANTONIO KNAUTH,
*Of Counsel for Appellee,*
A. G. JENNINGS.

Evening Post Job Printing House, N. Y.

# Supreme Court of the United States.

OCTOBER TERM, 1890.

**Nos. 265 and 266.**

HENRY R. KIBBE *et al.*,
Appellants,

vs.

ABRAHAM G. JENNINGS.

THOMAS DOLAN,
Appellant,

vs.

ABRAHAM G. JENNINGS.

## BRIEF ON BEHALF OF THE APPELLEE.

These are appeals from final decrees rendered in the Circuit Court of the United States for the Southern District of New York, awarding to Abraham G. Jennings and Warren P. Jennings, complainants, damages for the infringement of Letters Patent of the United States No. 218,032, dated July 29, 1870, for lace purling. Two Letters Patent were joined in the bills of complaint—Patent No. 218,032, and also the Design Patent No. 10,448, dated

February 12, 1878, for a design for fringed lace fabric. The defendants, Henry R. Kibbe and others, in case No. 266, being commission merchants and sales agents for the manufacturing defendant, Thomas Dolan, in case No. 265, and the infringements being to some extent the same in both suits, these two cases were argued together at final hearing upon the same proofs before his Honor Judge Wheeler, whose opinion will be found reproduced on page 270 of the record in the Kibbe suit. Interlocutory decrees were thereafter entered in both suits sustaining Patent No. 218,032, and granting complainants an injunction thereunder, and ordering an accounting under it, and holding Design Patent No. 10,448 not to have been infringed by the defendants. An accounting was had in each suit before a master of the Court and a final decree in favor of the complainants was entered in each suit (Kibbe Record, p. 298; Dolan Record, p. 29). From these decrees the defendants have appealed.

## Has this Court Jurisdiction of the Appeals?

By the 9th section of the Act of March 3, 1875, it is provided, "*that whenever either party to a final judgment or "decree which has been or shall be rendered in any Cir- "cuit Court, has died or shall die before the time al "lowed for taking an appeal or bring a writ of error has "expired, it shall not be necessary to revive the suit by "any formal proceedings. * * * If the party in whose "favor such judgment or decree is rendered has died be- "fore an appeal taken or writ of error brought, notice to "his representatives shall be given from the Supreme "Court as provided in case of the death of a party after "appeal taken or writ of error brought.*"

18 Statutes, 470.

The manner in which notice is to be given to the representatives of the deceased party after his death has been suggested on the record, is prescribed by Rule 15 of the Supreme Court.

In the present cases it appears from the record that the suits were originally brought in the Circuit Court by Abraham G. Jennings and Warren P. Jennings, as joint owners of the two patents, infringement of which was alleged in the bill of complaint. The papers in the suits in the Circuit Court were entitled in the names of both complainants throughout, including the final decrees entered on February 12, 1887 (Dolan Record, p. 29; Kibbe Record, p. 298). Thereafter, and before the appeal was taken, the complainant, Warren P. Jennings, appears to have died, as will be seen by reference to the petition of appeal filed March 25, 1887, the bond on appeal filed March 10, 1887, and the citation filed March 25, 1887. All three papers refer to Abraham G. Jennings as surviving complainant. Only Abraham G. Jennings is cited to appear in this Court, and no reference is anywhere made to the personal representatives of the deceased complainant, Warren P. Jennings. The death of Warren P. Jennings was thus sufficiently suggested on the record by the appellants, but no order was procured directed to any executor or administrator of the estate of Warren P. Jennings and notifying him of the appeal. It was the duty of the appellants to procure such an order in order to be able to proceed with this appeal. Not having procured such order or notified the legal representatives of Warren P. Jennings, whoever they may be, the appeal should be dismissed under the rule.

> "*If either party should die pending the appeal,*
> "*the case is to be proceeded in by making the repre-*
> "*sentative of the deceased a party to the record*
> "*according to the provisions of the thirty-first*
> "*section of the Judiciary Act* (*R. S.*, § 955) *and the*
> "15*th rule of Court, to which reference is made.*"
>
> *Phillips' Sup. Ct. Pr.*, *p.* 73, citing *Wilson* v. *Codman*, 3 *Cranch*, 206.

In the case of *McLane* v. *Boone*, the defendant in error died before the second writ of error was taken out. The

writ of error was taken out against dead men. The Court (through Judge Nelson) said:

> "*Application should have been made to the Court*
> " *below for the purpose of reviving the suit in the*
> " *name of the widow and heirs of the deceased; and*
> " *then a writ of error could have regularly issued.*
> " *If the Court should refuse, then it would become*
> " *necessary to issue it in the name of these repre-*
> " *sentatives, in the usual way, serving on them the*
> " *citation to appear at the next Term. The case of*
> " KELLOG *v.* FORSYTH (24 *How.*, 186), *is an author-*
> " *ity for issuing the writ in the name of the widow*
> " *and heirs, and also for the appearance of these*
> " *parties on the citation and make objections to*
> " *these proceedings, if they see fit.*"
>
> *McLane* v. *Boone*, 6 *Wall.*, 244.

In the case of *Moses* v. *Wooster* (115 U. S., 285), the surviving appellees were partners of the deceased party. For that reason the cause of action survived *to the others.*

Similarly in the case of *McNutt* v. *Bland* (2 How., 28), it was held that the cause of action survived *against the party* who alone was before the Court.

It is only in such cases where the cause of action survives *to or against the others* that the appeal can be proceeded with without calling in the representatives of the deceased party.

In the cases at bar, the complainants were not partners in business, but simply co-owners of the Letters Patent in suit, and the cause of action did not on the death of one of them survive to the other. Nor was the controversy severable between A. G. Jennings and the legal representatives of Warren P. Jennings. An injunction was granted by the interlocutory judgment and is still in force, and an adjudication of the cases with A. G. Jennings alone represented would, in case of reversal, produce a preposterous state of facts, the injunction being in force on behalf of one patentee, and set aside so far as the other is concerned.

Can the Court cure the neglect of the appellants in this respect? We think not. The final decrees were entered on February 12, 1887, and the two years limit for taking an appeal therefrom has therefore been long exceeded, and it would be only by a new appeal that the defect in the present appeals could be cured.

*The legal representatives of the deceased complainant not being in Court and there being no means of bringing them in*, it is respectfully submitted that this Court has no jurisdiction of these appeals, and that the same should be dismissed.

## The Patent.

The invention specified and described in Complainants' Exhibit Mechanical Patent, No. 218,032 (p. 155, Kibbe Record) relates to an improved reticulated lace purling, consisting of pillars of two rows of parallel, longitudinal meshes, through which a purl thread passes back and forth, forming a series of loops on each side of the two rows of meshes. By the use of two or more rows of meshes, as claimed in the patent, the loops are made to lie flat and substantially in a plane, parallel to the face of the meshes. The pillars are joined together so as to form a reticulated fabric. The invention also consists in fringes, being a continuation of the pillars thus made, and formed by letting the pillars run out for some distance without joining them together, as in the body of the fabric.

The gist of the invention lies, as is pointed out in the opinion of Judge Wheeler, in the pillars of the fabrics. But the use of two rows of meshes the loops are bound in the patented fabric in such manner as to lie flat and substantially in the plane of the meshes. Thus the beauty of the fabric as well as its usefulness as a protecting garment. is enhanced. Its usefulness is further shown by the extent of defendant's infringement and the numerous licensees who acknowledged the validity of the patent in suit. As Mr. Button says in answer to x-Q. 49 (p. 68, Kibbe Record): "It is more open and lofty and will give greater bulk for the money." In view of the novel effect

produced by the "double pillar" the patentability of the invention will not be seriously questioned. The only evidence brought to show the state of the art consists in two design patents (Nos. 10,388 and 10,448), which appear to illustrate "single pillar" fabrics and have just the characteristic which it was the intention of the patentee of the patent in suit to overcome.

The defendants took no evidence in support of these design patents, and they would, for this reason, again seem to be entitled to little regard under the rule laid down in *Putnam* vs. *Vom Hofe*, 19 *Blatchford*, 68.

## The Defenses.

The only defenses which seem to be worthy of serious consideration are:

1. Non-infringement and

2. Prior public use.

## Infringement.

The sale of the nubias, "Complainant's Exhibit Kibbe Nubias A and B," prior to the filing of the bill, is admitted by the appellants (Kibbe Record, page 16). These exhibits clearly infringe upon the two claims of "Complainants' Exhibit Mechanical Patent." As far as "Kibbe Nubia A" is concerned, the infringement is admitted by appellants' expert in his answer to question 7 (p. 266, Kibbe Record), where he compares it with the "Exhibit Dolan No. 3," which was brought forward by the defendants as an alleged anticipation, and with the patented structure. With reference to "Complainants' Exhibit Kibbe Nubia B," the appellants' expert claims (Ans. 9, p. 266, Kibbe Record) that it differs essentially in construction from the fabric described in the mechanical patent in the concatenation of the pillars. He points out that, while in the latter the meshes of the warp-threads or chains of the pillars are crossed into the chains of the adjoining pillars so as to form the reticulation, in the "Exhibit

Kibbe Nubia B," the loop-threads are carried over from one pillar into the neighboring pillar (the Court will perceive by an inspection of the exhibits that, while speaking of Exhibits Dolan Nubia A and B, the expert referred to the nubias which are also marked Kibbe Nubia A and B).

The expert treats the patent in suit as a patent for a peculiar concatenation of the pillars (Record, p. 267), and in that view he was fundamentally wrong.

The first claim of the mechanical patent is for a reticulated lace purling composed of pillars of a peculiar construction, while the second is for the same reticulated lace purling together with the fringes which are a continuation of the disconnected pillars. The patentees did not confine themselves to any particular manner of reticulation in the claims, and they should not be so confined, unless their intention so to do would clearly appear from the specification, or the state of the art should be such as to leave no invention except in the peculiar manner of reticulation.

Now, the specification very clearly throws the weight of the invention upon the construction of the pillars and not upon the mode of producing a reticulation of the same. The first mention of the manner of joining the pillars is contained in the words of the specification: "Figure 2 is a diagram showing the mode of joining the pillar, and of forming the fringes." Figure 2 shows a mode of joining the pillars in such a way that a reticulated fabric is produced, that is, it shows the *places* where the pillars are to be joined so as to produce the reticulation, but it in no way shows by *what means* the joining shall be effected—whether by knots, stitches or loops. The patent thereupon proceeds: "*The pillars are joined at proper in-*
"*tervals to form a reticulated fabric, as clearly shown in*
"*Figure* 2;" but again omits to state the means of joining the pillars. And this is all that the patent contains concerning the mode of joining the pillars, until the passage is reached where the patentees endeavor to explain one method by which the invention can be put into practical

use by those familiar with the art of making lace purling. There is thus nothing in the description of what is invented by the patentees to point to any one necessary mode of joining the pillars; and by describing the method most commonly used by them, they certainly did not intend to confine themselves to that particular method alone. Any other construction would allow the appellants to sew the pillars together by stitches or connect them by any other well-known method other than that described by the patentees, and thereby to avoid infringement, adopting at the same time that which was claimed as new and described as new.

*Tilghman* v. *Proctor*, 102 *U. S.*, 728.
*Lorillard* v. *McDowell*, 11 *Off. Gaz.*, *p.* 640.
*Stover* v. *Halstead*, 13 *Blatchf.*, 102.
*Paige* v. *Ferry*, 1 *Fisher*, 298.

Now, it is not contended by the appellants that the joining of the pillars by means of the loop-threads (as shown in Nubia B), instead of the warp threads (as shown in Nubia A) is an element which was unknown to the complainants or to those skilled in the art of making purled lace fabrics in general, and that it is so strikingly different and new as to involve invention. The appellants' principal witness, Henry A. Truitt, calls it "a very slight alteration" (Kibbe Record, p. 178, answer 222), and Mr. Renwick in no way undertakes to deny that it is merely one of the many ways used by practical lace knitters to produce the reticulation. He bases his opinion solely upon the point that the claims of the patent are for a "certain definite concatenation of threads which form a reticulated fabric," and that in Nubia B other threads are used for that purpose than those indicated by the patent. On the other hand, the practicability of joining the pillars by the loop-threads instead of the warp-threads is so manifest that it must be presumed to have been, like every other well-known method, within the object of the patentees.

The opinion of the Circuit Judge that the reticulation appears to be in all respects the equivalent of that of the

patent is plainly in accordance with the facts and the testimony.

The Court on this point says (p. 271, Kibbe Record):

"*The infringement seems to be clear, unless the patent "is limited to the particular mode of reticulation de-"scribed. The pillars of the fabric appear to be precisely "like those of the patent. The reticulation appears to be "in all respects the equivalent of that of the patent. The "pillars are really the principal things, and the substance "of the invention appears to be taken.*"

## Defense of Prior Use.

The appellants have attempted to show, by nine witnesses, that a fabric of precisely the same construction as that described in the first claim of the patent was manufactured some ten or fifteen years ago at the factory of the appellant, Thomas Dolan, in Philadelphia. The general drift of the testimony of appellants' witnesses is, that a fabric of which "Exhibit Dolan No. 3," in one of Dolan's books, is a sample, was manufactured at Thomas Dolan's factory between the years 1865 and 1871; but the statements made concerning this alleged manufacture are so full of contradictions that it is hard to give credit to any of them.

We will contrast, in the first place, the testimony of the three principal witnesses for the appellants, Henry A. Truitt, Cornelius Jackson and H. Salmon.

The witness, Henry A. Truitt, who is particularly relied upon by Mr. Dolan as having special knowledge of the manufacture of the article produced, says that Henry Boot, who was employed as designer in Dolan's factory, designed a fabric of which the "Exhibit Dolan No. 3" is a sample, in the years 1865 or 1866, and that thereupon considerable quantities of such fabric were made there between those years and the years 1870 or 1872; that he saw Boot and also Cornelius Jackson make it on the loom, although he did not see Boot design it; that it was made into nubias, long sheets, hood tops and various other

articles, and also in strips for trimmings, and such fabrics were sent to Dolan's selling agents, Messrs. Townsend & Yale in New York, and Roop & Kibbe, afterwards Colliday, Trout & Co., in Philadelphia; that he called the fabric "Sea Weed," which term included also fabric of the construction of the sample pieces Nos. 28 and 30, which are "single pillar" fabrics; that they were made at three different periods from 1866 to 1870, and that then their manufacture was finally stopped, because they were a slow production and the slowness could not be overcome. And that when the manufacture of this fabric had been finally abandoned by Thomas Dolan it was not taken up again until the injunction was issued in the suit brought by Jennings against Dolan on the "single pillar" fabric in the year 1881.

Cornelius Jackson, who came to Dolan's factory in the year 1869, says that he made several warps of the single and also of the double pillar fabric in the year 1870, when he made such fabric into nubias having fringes purled down the pillar; that he worked on it from four to five weeks *and made in all one piece the width of the loom* (Kibbe Record, pages 181 to 190, inclusive; also pages 69 to 72, inclusive). He admits that he did not see the fabric made in the factory until it was put on his loom, nor after he stopped making it (*Ibid.*).

The witness Salmon, who came in 1868, says that from the year 1868 to 1870 one loom ran steadily on such fabric, and sometimes more than one, and sometimes three, and that about ten to fifteen pounds of it were produced daily, and large quantities in all were made of it; that Boot designed the fabric, and witness recollects distinctly when Boot put it on the *sample loom*, and called his attention to it; that it was called "Sea Weed;" that Jackson and Edward McDevitt made the fabric which had, as a manufacture, about the usual life of fabrics (Kibbe Record, pages 190 to 206, inclusive).

Each of these three witnesses tells a story which is incompatible with that told by the others. They do not corroborate but exclude each other. Salmon and

Jackson, who testify to later years, each claim to have seen Boot making the fabric on the *sample loom*, which was used, as the witness Jackson says, exclusively for designing new patterns.

Now, if Boot designed the fabric in the year 1865 or 1866, and it was manufactured then as largely as Truitt swears it was, there was no reason why Boot should design it again in the year 1868. If from 1868 to 1870 it was continually made in the factory, as Salmon says, why should Boot design it again and Jackson *try* it again in 1870, nine months after he had come to Dolan's factory? Furthermore, Jackson's making of the article in question, as appears from the second cross examination, was nothing but an experiment, which was not followed up by a manufacture on a larger scale.

Salmon's testimony appears utterly untrustworthy; it comes to naught by his apparent desire to testify too readily and too much. Jackson, who worked in the same room where Salmon says that the fabric was made for nine months prior to the time when it was put on his loom, did not see it made there; nor did any one of the many employees who have been called and who were employed in the same room sustain the witness in saying that even one loom ran steadily on such fabric. If that had been the case, it could not possibly have escaped the notice of every one of the employees who have been called by the appellants as well as by the appellee. The record shows that Salmon never signed his testimony, and for that further reason it should not be considered. To show the utterly frivolous character of his testimony it is only necessary to refer to his positive assertion that the sample "Exhibit Dolan No. 3" is a piece of the original fabric produced before 1870, although when Truitt put it into the book he was not present (Kibbe Record, pages 192 and 166). Nor had he charge or possession of the book, nor was he present when Truitt took out the sample, reproduced it, kept it in the wareroom drawer, and put it back again, as claimed by him; or to his coolly pointing out Edward McDevitt as the one besides Jackson who

made it (Kibbe Record, page 197), while McDevitt does not remember any such thing himself; or to the assurance with which he speaks of Boot designing and showing the fabric to him and calling his attention to it as a "particularly nice thing;" or by his absurd assertion that he was able to and did recognize an old hood recently worn by a woman on the street as manufactured by Thomas Dolan between 1868 and 1870.

The mere fact that the witness Salmon throughout his testimony does not discriminate between the single and the double pillar fabrics, and that his testimony is in conflict with that of all the other witnesses who profess to speak from personal knowledge, seems to be amply sufficient to disqualify him as a reliable witness.

*Is the witness Truitl of a more reliable character?* His version of the story that the fabric shown by the sample "Exhibit Dolan No. 3" was made at three different periods between 1866 to 1870, is in conflict with Salmon's and Jackson's assertions that they, and each of them, saw Boot make the fabric on the sample loom, the one in 1868, the other in 1870.

He refers us to three matters which fix in his mind the manufacture of the alleged anticipating device. They are: First, the business books of Thomas Dolan which the witness kept; Second, the name of "Sea Weed" which he gave to the fabric, and, Third, the sample piece, "Exhibit Dolan No. 3."

With reference to the business books, the witness had to admit that they did not show any description of the article in question (Kibbe Record, page 52, answer 39); and on this point the Court is invited to compare with this testimony of the witness the affidavit made by him in the year 1881, in which he swore that the business books contained a description of the nubias, hoods, caps and cloaks made of material the same as the exhibits contained in the sample book, and that those entries were in his own handwriting (Kibbe Record, page 20). On cross-examination the witness was compelled to admit that his statements as to the contents of the books were untrue, sentence for

sentence, and as they were made shortly after he had seen and read the so-called descriptive books, his statements were not simply mistakes of a thoughtless witness.

All that appears from the entries in the book produced by the witness is that in the year 1866 some fabric called "Sea Weed" was made in the factory. It is quite plain that this term does not help us in fixing the manufacture of the article in question, as it admittedly comprised also articles of other construction, as, for instance, the "single pillar" fabrics represented by the samples Nos. 28 and 30 in the same sample-book. The latter two samples are made of worsted, while "Exhibit Dolan No. 3" is made of wool material; and Mr. Dolan says that if before 1870 he had been able to get the latter kind of yarn (woolen), the fabric then made by him would have been much more successful (Kibbe Record, page 215, answers 88 and 89). There is no explanation given why this one piece, "Exhibit Dolan No. 3," happens to be of wool, while all the other samples are of worsted, and the statements made by Mr. Dolan concerning his inability to procure such woolen yarns in 1870 does not tally with the testimony of this witness that that sample was produced in 1870.

The third pillar of Truitt's belief is the most shaky of all. In order to disprove the novelty of complainant's invention, he produces one solitary sample-piece of fabric, the history of which is shrouded in mystery, which has confessedly been torn out of the book once and "replaced," and which bears the marks of suspicion on it. Truitt first said that this sample-piece was a piece of the original fabric manufactured at the factory of the appellant, Thomas Dolan, prior to 1870, and that he took said piece from the original fabric, and placed it in the sample-book, in which it now appears, *and that it has remained in said book ever since that time, which book has been in the witness' keeping* (Kibbe Record, page 23, top of page). He afterwards stated that the same piece was once taken out by him for the purpose of having a reproduction of it made for use in the suits commenced by Jen-

nings against Dolan on the single pillar fabric. This was either in the latter part of 1879 or the forepart of 1880, and the sample remained out of the book only for a short time, and remained in Truitt's possession (Kibbe Record, pages 28 and 29). Part of the time while it was out of the book, it was kept in the wareroom in the table-drawer, and part of the time in the loom shop.

Now, if there ever was any reproduction of this sample, it is strange that no sample of the same construction appears in any of the later sample-books of Thomas Dolan, which were examined by the witness, Conyers Button, and were as accessible to defendant's counsel and witnesses as the two books retained by Thomas Dolan and used in these suits, for, as Truitt and Salmon both maintain, a sample was always kept whenever a fabric was *reproduced*, and was placed in the book of samples belonging to the year of *reproduction* (Kibbe Record, page 177, answer 216).

But the sample itself, its appearance and condition, and the manner in which it is gummed into the dook, throw very strong doubts upon its genuineness. Dr. T. O'Connor Sloane, complainant's expert, testified that the paste-marks under this sample have adhering to them filaments of wool, *some of these filaments being red*, thereby indicating that a piece of fabric containing red worsted had adhered to the paste and left some of its filaments adhering and that the lower pasted area had apparently had something torn off it, presumably a sample of worsted goods which evidently adhered with considerable tenacity, as pieces of the paper have been torn off in spots. It is impossible, from the appearance of the sample, to believe that it was originally pasted to the paper and to the same places on both ends, as Mr. Truitt maintains in his affidavit of December 15, 1881; for a fabric of such light texture as the exhibit could never be torn as violently from the pasted surface without being partly torn itself, or, at least, showing the strongest signs of tension and deterioration. The witnesses who examined the sample at the time when it was first exhibited to the complainants, Dr. Sloane, Thomas Stringer

and Warren P. Jennings, all testify that its appearance at that time was fresh and bright and lofty, and did not convey the idea that the sample had been kept in a state of compression in a book for more than ten years. This was so apparent that even one of defendant's witnesses, Mary Kimble, on looking at the exhibit and being questioned with regard to it, stated *that she thought it was one of recent make*, although she was not sure of it. The small red filaments pointed out by the witness Warren P. Jennings to the Examiner, could not possibly have got into the paste under the sample if the sample itself had not contained red threads, which, when the sample was torn off, left particles remaining in the gum; they can also not have come from some other samples, because the piece which lies opposite the "Exhibit Dolan No. 3," in the book is a white piece.

Now what does the witness CORNELIUS JACKSON tell us with reference to the manufacture of this article? He stated in an affidavit made at the commencement of the suit, in opposition to a motion for preliminary injunction, that at the time when he was set to work on fabric of the construction of "Exhibit Dolan No. 3," prior to the year 1872, he manufactured *large quantities* of fabric of precisely the same construction; that he saw Boot manufacture the same fabric upon another loom in the same room, and was informed at that time that said fabric had been made prior to deponent's entering Dolan's employ; that the fabric thus produced was sold by Dolan to the trade throughout the country, as he was informed; that afterwards, since the year 1874, he had occasion to repeatedly refer to and examine the samples contained in the sample-book marked "Samples to 1869, Thomas Dolan," and to the samples in question, and has ever since been very familiar with it (Kibbe Record, pages 35 to 37).

Of all these assertions, only very little remains in the course of his cross-examination, where the "large quantities" of the fabric manufactured by him dwindle down to two or three warps made all into one piece, which

quantity *includes as well the single as the double pillar.* We quote from his cross-examination:

"*Q.* 6. *Do you remember how long the warp of fabric* "*like Dolan Exhibit No.* 3 *was which you made in* 1870?

"*A. I do not.*

"*Q.* 7. *Do you remember whether it was a long warp* "*or a short warp?*

"*A. A long warp.*

"*Q.* 8. *Do you think that it was more than twenty rings?*

"*A. No, I think not.*

"*Q.* 9. *Between ten and twenty?*

"A. *That's more than I can say there.*

"*Q.* 10. *So it may have been shorter than twenty rings?*

"*A. It might have been shorter.*

"*Q.* 11. *Did you make only one warp of that fabric in* "1870?

"*A. I made two or three warps.*

"*Q.* 12. *Do you mean two or three warps of the double* "*pillar, or do you mean two or three warps, including the* "*double and single pillar?*

"*A. Including both.*

"*Q.* 13. *Do you remember how much you made of the* "*double pillar?*

"*A. I do not.*

"*Q.* 14. *Then you do not remember how long the warp* "*was that you made of the double pillar?*

"*A. I do not.*"

Kibbe Record, p. 69.

Jackson is also compelled to admit that he did not know what became of the fabric manufactured by him, or that the fabric was stretched or pulled at all after it had been made; while in his affidavit of October 21, 1881, he had given a detailed account of the way in which the fabric was stretched and pulled; and finally, concerning his acquaintance with the sample to which he has testified in his affidavit with so much confidence and positiveness, stating that he used to refer to it constantly, he is compelled to admit that he had no occasion since 1876, when

he first saw it, to examine or refer to the sample until about 1879, when, as he says, he reproduced it (Kibbe Record, p. 183). Taking into consideration the general character of his statements and the failure to distinguish properly between the single and double pillar, his testimony does not positively show either that he made the double pillar fabric in 1870 or that he knew the double pillar and knew how to distinguish it from the single pillar until his attention was more especially called to it by the events in these suits. But there is another fact which throws considerable doubt on the correctness of his evidence. When questioned whether he could name any one who knew about his manufacturing the double pillar fabric, he at once and solely referred appellee's counsel to Mr. Beck (Ans. 116–117, p. 89, Kibbe Rec.).

The importance of Beck's testimony, who is the only witness who positively claimed to have *seen* Jackson work the double pillar fabric *in* 1870, is apparent. At the hearing of the motion for a preliminary injunction, the appellants produced an affidavit, dated December 11, 1881, wherein Beck swears that on that day he examined the piece, "Exhibit Dolan No. 3," and immediately recognized the same as being a piece of fabric of the same construction as that manufactured at Dolan's factory before 1872 in considerable quantities, and that it was made on the third loom from his (Ans. 21, p. 232, Kibbe Rec.). When the appellants' testimony was taken, Beck was again called, when he stated that such fabric had been made at Dolan's factory 12 or 13 years ago, that he had seen it while Jackson was working it on his loom and could swear positively to its manufacture at that time (Ans. 11–19, pp. 231–232, Kibbe Rec.). He further stated that some one, who said he was a partner of Jennings, had called upon him and shown him a piece of such work, asking him whether Dolan made such stuff, whereupon he had answered "yes"; and upon the *leading* question of appellants' counsel he added that he then at once recognized the fabric and informed Jennings' partner that the fabric had been manufactured at Dolan's factory before

he left, which was in 1872 (Ans. 22–24, pp. 232–233, Kibbe Rec.). During the cross-examination which then followed, he substantially stood by his assertions, but showed a peculiar clearness of recollection about the sample, Exhibit No. 3, while as to all the other fabrics shown to him his mind was almost a blank.

It was for this reason that upon reviewing his testimony later, appellee's counsel decided to re-examine him for the purpose of testing his veracity. The disastrous result of this re-examination to the appellants' case can be summed up in a few words.

The following facts appeared:

At the time when these suits were in the course of preparation, Jackson, who seemed to be interested in them, called on George Beck, a former employee in Thomas Dolan's factory, and asked him whether he remembered the manufacture of fabric of the construction of "Exhibit Dolan, No. 3," at Thomas Dolan's factory, exhibiting to him at the same time a piece of such fabric. *Beck told him that he did not remember anything about it, whereupon Jackson said that he made it* (Ans. 31–34, p. 138, Kibbe Rec.). A few weeks thereafter, appellee's counsel, or some one on his behalf, called on Beck, for the purpose of obtaining information from him about the manufacture, and Beck told him that such fabric *had* been made at Dolan's factory (Ans. 22–23, pp. 232–233, Kibbe Rec.), because he had just been informed by Jackson that such had been the case (Ans. 94–95, p. 143, Kibbe Rec.). Shortly thereafter Jackson again called upon Beck, and inquired what the business of appellee's counsel in calling upon Beck had been, whereupon Beck told Jackson of the answer he had given him. Thereupon Beck was called to the office of appellant Dolan, where he found Jackson and Mr. Bennett (Ans. 13–19, p. 137, Kibbe Rec.), and in an interview which lasted about two hours, was prevailed upon to make an affidavit which was afterwards used in opposition to the motion for an injunction, where he stated that he had seen Jackson make such a fabric at Thomas Dolan's factory in the year

1870, and distinctly remembered its manufacture (Ans. 13, *et seq.*, p. 137; Ans. 75–90, pp. 142–143, Kibbe Rec.). When this unfortunate old man was called to testify in the suit, he stood by the statements made by him in his affidavit, for whatever reasons he may have had for doing so, and only saw fit to deny their truth when more than a year afterwards he was called again by the appellee to testify in the suit. Then it was that his conscience could not bear the strain of the false statements which he had made on his previous examination, and he made a clean breast of it, as soon as the subject was touched.

"Q. 40. Did you not testify to all the facts set out in "in your testimony of your own free will and knowledge?

"A. No, sir; it was not what I knowed myself, it was "*what I was told*; that was what I went from."

P. 139, Kibbe Rec.

And again:

"Q. 57. When you swore positively that such fabric "(referring to 'Exhibit Dolan No. 3'), was manufactured "at Thomas Dolan's before you left in 1872, and in con- "siderable quantities, you swore falsely, did you?

"A. Yes, sir; *I went by what I was told;* I did not go "by what I seen myself, because I never did see it; I am "sorry I made the mistake."

P. 140, Kibbe Rec.

We have no intention here to throw any slur on the action of the counsel who took the affidavit at Mr. Dolan's office; but Mr. Jackson's behavior, who knew *out of Beck's own mouth*, that he did not know anything about the manufacture of any such fabric at Thomas Dolan's factory, speaks volumes, since he was present during all the time when this affidavit was taken by appellants' counsel, and afterwards referred to Beck, and only to him, as the man who would corroborate his testimony.

If Jackson had not testified falsely, he certainly would not have found it necessary to seek corroboration out of

the mouth of one who, to his knowledge, could not honestly corroborate him.

We will now see whether any of these three conflicting stories is corroborated by the other witnesses for the appellants:

*Mr. Thomas Dolan*, in speaking about the manufacture of such fabrics at his factory prior to 1870, does not testify from personal knowledge. The "most positive way" in which he arrives at the conclusion that such fabrics were manufactured prior to 1870, is that about 1869 there was quite an accumulation of samples which were kept affixed to tags, so that it became necessary to collect them in books, properly marked, and that the piece, Exhibit No. 3, is one of the lot (Ans. 6, p. 207, Kibbe Rec.).

Whenever he is questioned specially about the facts of the manufacture, or the designing of the pattern, he invariably refers to Mr. Truitt as better informed on those points than himself. But even the skilled manufacturer is unable to distinguish properly between the double pillar and the single pillar fabrics, and thereby takes away from his testimony considerable of its weight (Ans. 14–15, p. 208; Ans. 81–85, p. 214, Kibbe Rec.). He says that he does remember one man whom he saw operating the loom on which the fabric was manufactured, and thinks that his name was McDevitt; but the two McDevitts who have been called on appellants' side, do not pretend that they made it themselves, nor is there any other evidence that another McDevitt made it. At all events, Mr. Dolan has no recollection sufficiently distinct to give us any dates when the fabric was made, or what quantities of it were made, and his testimony, therefore, amounts only to a general certificate of truth to any plausible story which may be found in the testimony of the other witnesses.

*Mary Kimble* went into the employ of Thomas Dolan on the 1st of March, 1865, but *did not see the fabric until the year* 1868, when, she says, it was used as a trimming. She also throws the single and double pillar fabrics into one class; but seems, after a somewhat lively cross-examination, to stand by her position that the fabric "Exhibit

Dolan No. 3" was made at some time, although she is not sure whether the heavier fabric of the style was of the double pillar, or was of heavier yarn (Ans. 76–79, pp. 223–224, Kibbe Rec.). She says that fabrics shown by the patterns Nos. 28 and 30 had been called "Sea Weed," and that the "Exhibit Dolan No. 3" was called "Purled Lace Work," thus coming into conflict with Truitt's statements (Ans. 71–72, p. 223, Kibbe Rec.). But even she is not prepared to give us anything except very vague statements about the quantities or the time of such manufacture.

*Edward McDevitt* was with Thomas Dolan since the close of the war. He says that he saw that kind of fabric made in the factory about the year 1868, and that he saw *Cornelius Jackson* (who did not come to the factory before 1869, and claims to have made it in 1870) make it, he being the only one whom he remembered; and that "Exhibit Dolan No. 3" was made about the same time as the piece No. 28. But here again it is remarkable that while Jackson says that he made the single and the double pillar at the same time, McDevitt does not remember having seen the single pillar (Ans. 53–54, pp. 241–242, Kibbe Rec.). He also says, what is suggested by Jackson, that there was a great deal of trouble with it, and that when they came to take it off the roller it would stick, and that it required some experimenting before it got to working all right. In the end he says: "I cannot say it was on the loom a week and more, to the best of my remembrance. I worked right opposite to the loom it was made on" (Ans. 63–64, p. 242, Kibbe Rec.). But he does not know either how wide the strips of this fabric were, or how long, or that it was called "Sea Weed," and, altogether, calls all three fabrics generally "purling *trimming*" (Ans. 87, p. 243, Kibbe Rec.), which name does not suggest that the fabric was used for articles like nubias, or any larger sheets, as Jackson claims to have made.

While Edward McDevitt places the manufacture of the article in the year 1868, his brother, *George McDevitt*, who left Dolan's employ on September 1, 1868, is of opinion that

it was made *previous* to 1868, in about 1865 or 1866 (Ans. 16, p. 245, Kibbe Rec.).

*George Mousley*, the foreman of the rib department since 1866, left Dolan's employ in 1870. He does not know who made the fabric, how long the loom ran on it, nor when it was made, or how much of it was made. As near as he can remember it was somewhere in May or April, in 1866 or 1867, when he saw it, and it was in strips for trimming hoods, but not in shawls. Nos. 28 and 30, he says, were made at the same time, and there was nothing to call his attention specially to the fabric, "Exhibit Dolan No. 3," except Boot asking him one day how he liked it; but, he adds, Boot asked him every week, and frequently, about the samples (Ans. 68–69, p. 257, Kibbe Rec.), and, thus, this fact does not seem to be of such special importance as to be likely to fasten the manufacture particularly on his mind. As near as he can remember, it was made for several weeks, but when, he is not certain.

Every one of the four witnesses last named points out a different time when the fabric is said to have been made. George McDevitt places it in the year 1865 to 1866; Mousley, in the year 1866 to 1867; Mary Kimble, in the year 1868; and Edward McDevitt, in the same year, which is apparently a mistake, as he says that he saw it only on *Jackson's* loom for about one week, who does not claim to have made the fabric before 1870. The names of all of them, as also that of the witness Salmon, were not stated in the appellants' answer, and their testimony was therefore properly objected to on the record by appellee's counsel, whereupon the appellants' counsel stated that they were called only to corroborate the testimony of the witnesses whose names were given in the answer.

No weight ought to be attached to their testimony, unless that is clearly the fact (see Blatchford *vs.* Putnam, 8 Wallace, 420; Collender *vs.* Griffith, 11 Blatchford, 212; Campbell *vs.* Mayor, 20 Blatchford, 67).

But, instead of corroborating Mr. Truitt's, Mr. Salmon's or Mr. Jackson's testimony, they are in conflict with

it. Every one of these four witnesses, as we have seen, testifies only to sporadic attempts to make the patented fabric, or some similar fabric, and none of them ventures to say that the same was ever made at Thomas Dolan's factory in any considerable quantities; while Salmon and Truitt both maintain that the fabric was manufactured and sold, or consigned to Thomas Dolan's agents in large quantities, at different periods, between 1866 and 1870. If that had been the case, it would have been possible, if not easy, to obtain corroborating testimony by persons who did not stand under the control of the appellants, as all the employees do who have been called. If it had been sent to Thomas Dolan's agents, and the fabric had been sold by them in the trade, either those agents or the jobbers and merchants dealing in the article would have some knowledge of it. Now, on the contrary, Messrs. *Townsend & Yale, the appellants' selling agents* in the City of New York, were both called by the appellee and testified that they do not remember ever having seen any such fabric before the time when the same was brought out by the Jennings; and they believe that if the fabric had been sent to and sold by them in considerable quantities, as claimed by Truitt, Salmon and Dolan, they would have some remembrance of it (Ans. 5, p. 113; Ans. 12, p. 114; and Ans. 6–11, pp. 118–119, Kibbe. Rec.). The other selling agents of the appellant Thomas Dolan, are the appellants in the second of these suits, and if any one of them had had some knowledge or recollection of this fabric, the appellants would certainly not have failed to make use of it. It appears, moreover, from the testimony of the appellant Henry R. Kibbe, that not only he, but also his successor, William G. Colliday, in Philadelphia; Clinton J. Trout and Joseph Roop, who were all in succession, members of the same concern, and agents of Mr. Dolan, were living and accessible to the appellants. Their silence is telling. The evidence on the part of the appellants is certainly not so clear and convincing that no additional proof from disinterested persons is required; and the absence of any testimony of a public sale or even

a public use of the fabric clearly refutes the idea that it was made on any considerable scale, if at all. If that is not the case, it takes the gist and merit out of Truitt's, Salmon's and Dolan's assertions. It will not do to say that it may have been made, or attempted to be made, at times in small quantities, and its manufacture dropped again immediately thereafter, for a limitation like that would lead to the inference that if Truitt's, Salmon's and Dolan's testimony is incorrect in such a material degree, its incorrectness may extend to the very existence of the double pillar fabric.

The state of the art of making certain fabrics will be best known to those whose business and occupation it is to manufacture them, and who are driven by an active and restless competition to keep themselves thoroughly well informed about any new article which appears in the market. And if such manufacturers found it profitable to imitate the patentee's contrivance when the same was publicly exhibited, and to enter at once largely into the manufacture of such patented article, and are thereupon reluctantly and under resistance compelled to acknowledge the patentee's prior and exclusive right to such manufacture, it goes far to prove that the article thus favored by them was not publicly known before the grant of the patent.

This is the case here.

A suit was brought by the complainants in the Court below against James H. Sayre and Joseph W. North and James E. Hedges, manufacturers and dealers in knit goods in the City of New York, on the Design Letters Patent No. 10,448, and another patent, in which the appellants were compelled to respect the several Letters Patent and acknowledge their validity (pp. 132 and 139, Kibbe Rec.). The firm of French & Ward, also dealers and manufacturers of knit goods in the City of New York; Ramien Brothers & Co., in Milwaukee; Marriott & Cook, in Stoughton, Mass.; Henry Crine, in the same place; C. H. Landenberger & Co., in Philadelphia; Conyers, Button & Co., of Germantown, Philadelphia; by

taking licenses to manufacture goods under the Letters Patent in suit from the appellee (Kibbe Rec., p. 131), acknowledged there was nothing known to them which they might use as a defense to the claim of the patentees to collect royalties on all articles manufactured under the patents in suit. A suit was also brought by the appellees on the design patent in suit against John E. Hodgkins, another manufacturer of lace goods, in which a decree was entered in favor of the complainants, in the Circuit Court for the District of Massachusetts, in May Term, 1880 (pp. 132 and 137, Kibbe Rec.). To those here recited as having acknowledged the priority of the patentees concerning their invention, are to be added Mr. Dolan's own selling agent in the City of New York, Messrs. Townsend & Yale, and also Martin Landenberger, one of the oldest manufacturers in this line of goods in the City of Philadelphia, whose testimony is corroborated by that of James Phipps, his principal foreman and former business manager, who all admit that nothing was known to them before the date of the patent which might injure the patentees' claim under it.

There is nothing produced by the appellants, except the sample piece of fabric contained in the book marked "Samples to 1869, Thomas Dolan," marked "Exhibit Dolan No. 3."

Yet it appears, that as soon as the patentees had brought out the patented fabric, the production of such fabrics was begun on all sides on a large scale, and has continued ever since, and has thus been a source of great profit, not only to the patentees, but also to the manufacturing class and to the public. Thus Mr. Conyers Button, one of the most prominent and best known manufacturers of knit goods in this country, who bought up the whole knit goods department of the appellant, Thomas Dolan, and thereby became his successor in business (Ans. 7, pp. 63–64, Kibbe Rec.), on cross-examination, by appellant's counsel, states that the stitch invented by the patentees is a peculiarly successful one; indeed, belongs to the most successful class of stitches used, the secret of its success

probably lying in the fact that *it gives greater bulk for the money expended on the fabric* (Ans. 49–51, p. 68, Kibbe Rec.).

Mr. Robert Ward, also a prominent manufacturer of such goods in the City of New York, testifies as to the impression the fabric made on his mind when he first saw it, and thinks that he would remember any fabric which was placed on the market during the twenty years when he was in business, which aprroximated in importance the patented fabric, or would be as noticeable as it (Ans. 10, p. 121; Ans. 22 and 23, p. 123, Kibbe Rec.).

The Exhibits Truitt No. 1, Truitt No. 2, and Truitt No. 3, which are evidently *bona fide* old exhibits, show a knitted fabric having fringes, the fringes being integral with the body of the fabric. It is not claimed by the patentees, as part of their invention, that they manufacture a fringe which issues out of the body of the fabric; the threads of the fabric being used to form the fringe. This would be an expansion of the second claim, which is not warranted by its language. But none of these exhibits shows a purled fabric, or a fabric having pillars with projecting loops, where such pillars were used to form the fringe. On the contrary, in all the three exhibits the threads which form the fringe are interwoven with each other in a certain manner, which is *different* from the way in which the fabric is woven. It will be necessary, therefore, in the manufacture of such fringes, to change the machine on which the fabric is made, while in the patented fabric no such change is necessary, except that the reticulation of the pillars is omitted. Now, although it may be old to to make fringes by using the same threads which constitute the body of the fabric, it does not follow that it was old to form such fringes by pillars, having projecting loops on either side, or to form fringes by simply letting the fabric run out, as it is called by the witnesses. On the part of the appellants, Mr. Henry A. Truitt and Mr. Charles H. Salmon assert that it is, and had been common practice for many years prior to the date of the patent to extend the fabric out without joining the parts

together into meshes, so as to form the fringe or finish (Ans. 54 and 55, p. 163; Ans. 230–233, p. 179; Ans. 34–36, p. 193, Kibbe Rec.). But they have not been able to produce a single piece of fabric in which a method of forming the fringe was used, analogous to that claimed in the patent. Both witnesses were employees of the appellant Thomas Dolan; both were therefore interested in the event of these suits, and in both it is very apparent that the desire to prove their case calls forth statements from them which are in conflict with the evidence given by the other witnesses for the defense, and will not stand a scrutinizing examination.

The appellee has examined almost everyone who was present in the warp-loom room, where the fabric is said to have been made, during the years from 1865 to 1870, with the exception of those who are dead or out of the country. These witnesses testify with different degrees of certainty that no such fabric as claimed by the appellants was ever made at Thomas Dolan's factory during those years, and that they would be aware of such manufacture if it had taken place.

The witness *William Radford* testifies that he worked in the same room together with Jackson, and that he saw him make a fabric consisting of a straight little trimming similar to the pillars used in the piece, "Exhibit Dolan No. 3," but that these trimmings were not tied together, and he never saw a fabric in which they were tied together. We do not place great weight on his testimony, as it is not corroborated by any other witness; and the witness himself appeared rather confused when he was examined. But one thing is clear, that if he did remember the straight trimmings described by him, he would very probably also remember a reticulated fabric made out of such trimmings, if it had existed then. The sample books do not show any such straight trimmings, consisting of a double pillar having loops on both sides; and none of the appellants' witnesses, have maintained that they had been in the factory; but, even if made, they would in no way suggest the peculiarly successful reticulated fabric

claimed in the patent. Of the other witnesses, Henry Henson, Thomas Langham, George A. Henhoeffer, William Ward, James Rose, William Newton and John Mitchell, the last five named probably had the best opportunity of stating positively whether such fabric was made at Thomas Dolan's factory.

The witness, *Henhoeffer*, worked at the factory from 1862 to 1871, and for a while just before he left work close by Cornelius Jackson, and before that time worked in the same room with him, but on the opposite side; but still he never saw such a fabric made there, nor did he make it himself.

The witness, *William Ward*, also worked in the warp-loom room from January, 1865, to July, 1869, and never saw any fabric of the construction of "Exhibit Dolan No. 3" made there.

The witness, *James Rose*, who was at Dolan's factory from 1866 to 1872, working a warp machine, was separated from Jackson only by two machines in the workshop, and never saw Jackson make the fabric, nor any one else, nor does he believe that it was possible that the fabric could have been made in the same room for four weeks in succession without his seeing it.

The witness, *William Newton*, came to Dolan's factory in the early part of 1866, and worked there at different times thereafter both in the double rib and in the warp-loom room. He never saw the fabric in question made anywhere until the year 1878, when he saw it in a store window where it struck his fancy immediately (Ans. 38, p. 117, Kibbe Rec.).

The witness, *John Mitchell*, came to Dolan's factory in about 1868, and continued to work there "until he stopped about two years ago" (Ans. 4, p. 53, Kibbe Rec.). He also worked in the warp-room together with Jackson and Boot, but never saw the said fabric made there, and is sure that it could not have been made into any article without his seeing it, although he admits that Jackson might have made "bits" without his noticing it (Ans. 26–30, p. 54, Kibbe Rec.). He also testified that two or

three years ago when the suits were instituted, Mr. Truitt showed him a sample contained in one of Mr. Dolan's sample books, and asked him whether he recollected Boot making that bit of stuff. The witness said "No," whereupon Mr. Dolan said: "Well, then, John don't know anything about it" (Ans. 12, p. 53, Kibbe Rec.). By his examination the witness has shown that he does know something about it, and that his knowledge is not favorable to the appellants. The sample showed to him was red and white, and about two or three inches square, and on inspection of the book marked "Samples to 1869, Thomas Dolan," the witness does not find it again, although the book then showed to him was similar to the book offered in evidence (Ans. 17, p. 53, Kibbe Rec.). This testimony is rather suggestive, in view of the fact that the small filaments sticking in the pasted surface under the sample exhibited by the appellants, are red and white, and of the same color as the sample which Mitchell testifies was shown to him. The witnesses, *James Phipps*, *David Briggs*, *Martin Landenberger* and *Conyers Button*, the latter two being large manufacturers of knit goods, testify that no such fabric as shown by the sample, "Exhibit Dolan No. 3," appeared publicly in the market in Philadelphia during the times when it is claimed by the appellants that it was made and sold. Their testimony would seem to be amply sufficient to counterbalance the mere assertions on the other side.

In view of this state of the evidence, it seems clear that the defense of prior use of the invention in suit has not been made out. As his Honor Judge Wheeler remarked in his opinion, the case hinges upon the genuineness of the sample produced by the appellants, which is the only exhibit referred to by their witnesses. That sample has admittedly been taken out of the book, and is not, therefore, in its original condition; and so many points of suspicion concerning it are brought out by the testimony of the witnesses, that it is not a reliable piece of evidence upon which the presumption of novelty of the patented device should be overthrown.

The Circuit Judge who delivered the opinion in the case below, applied the following criticisms to this part of the evidence:

"*No article of that manufacture is shown besides the "sample, and that is shown to have been put into the book "since the invention and since controversy about it. The "evidence of the defendants tends to show that the same "one was taken out and replaced; the appearance of the "book indicates that a sample of different color and size "had been in that place. The force of the evidence de- "pends upon the identity of that sample. So much doubt "is thrown about it, upon the whole proof, as to bring it "below the degree of certainty requisite to defeat a pa- "tent. After repeated examination, serious doubts remain "about the production of that article as claimed. The "proof should overcome these doubts in order to invalidate "the patent, and as it does not, the patent stands as valid.*"

These strictures are in entire conformity with the evidence, and the rule applied by the Judge, is the rule which has been commonly applied in the various circuits upon the decree of proof required to overthrow a patent. Thus, in the case of *Wood* vs. *Cleveland Rolling Mills Co.*, Mr. Justice Swayne, said:

"*The testimony should be weighed with care, and "the defense allowed to prevail only when the evidence is "such as to leave no room for a reasonable doubt upon the "subject.*"

See also

*Perham* v. *The American Button Hole Co.*
*Taylor* v. *Wood*, 12 *Blatchf.*, 121.
*Andrews* v. *Carman*, 9 *Off. Gaz.*, 1011.
*Hazelden* v. *Ogden*, 3 *Fisher*, 378.
*Campbell* v. *Mayor*, 20 *Blatchf.*, 67.
*Murphy* v. *Eastham*, 12 *Holmes*, 113.

THE ACCOUNTING.

The appellants allege two grounds of exceptions to the Master's report in the Kibbe case. The first is that the

Master refused to find that Thomas Dolan & Co., made and accounted for the $2{,}785\frac{9}{12}$ dozen nubias which he finds were sold by Kibbe, Chaffee, Shreve & Co. This is expressed in the first and fourth exceptions (Kibbe Record, p. 295, 296).

The second exception is that the appellee had not established a uniform license fee of fifty cents a dozen as found by the Master, and it is expressed in the second exception (*Ibid.*). Only the second ground of exception is urged in the Dolan case.

None of the grounds of exception were, so far as the record shows, taken before the Master, although the Master's draft report was submitted to counsel. In the Kibbe case the record shows (p. 295) that the appellants presented *some* objections to the Master, but it does not state what these objections were, and it is therefore impossible to determine from the record whether they are the same objections now pressed. In the Dolan case it appears that the appellants filed no objections to the draft report of the Master (Dolan Record, p. 27).

Under the following decisions these exceptions should therefore be overruled:

*Story* v. *Livingston*, 13 *Peters*, 359.
*Celluloid Manfg. Co.* v. *Cellonite Co.*, 40 *F. R.*, 476.
2 *Daniell, Ch. Pr.* (2d *Amer. Ed.*), 1483.
*Church* v. *Jaques*, 3 *Johns. Ch.*, 81.
*Troy* v. *Corning*, 6 *Blatchf.*, 328.
*Copeland* v. *Crane*, 9 *Pick.*, 73.
*Gaines* v. *New Orleans*, 1 *Woods*, 104.
*Gordon* v. *Lewis*, 2 *Sumner*, 143.
*Cowdry* v. *Railway Co.*, 1 *Woods*, 331.

There is no merit in the first exception alleged in the Kibbe case to the effect that a finding against the Kibbes should not be justified because the same nubias were accounted for in the Dolan case. Of course the appellee cannot recover from both parties for the identical infringement, but there can be no question that he may

have his decree against each of the wrongdoers, so that if one should fail to pay, the other must pay. The decrees in both cases are drawn with a special provision which will protect the appellants against any possible injustice (Kibbe Record, p. 299; Dolan Record, p. 29).

The exception to the Master's finding an established license fee should, under the decisions already quoted, be made to the Master's draft report. It goes to the sufficiency of the evidence presented to the Master on which he based his finding, and if it was raised before the Master, further evidence might be taken upon the mooted point; this not having been done by the appellants the Master's report is presumed to be correct and sustained by the evidence, if any evidence was offered before him.

*Kimberly* v. *Arms*, 129 *U. S.*, 512 *and* 527.

The only testimony on this point before the Master was that of Abraham G. Jennings, the appellee, who testifies that he was paid by Marriott & Crine a royalty of fifty cents per dozen on the double pillar nubias, these being the nubias made under the Patent No. 218,032. He says (Kibbe Record, p. 285):

"*The royalty of fifty cents per dozen nubias called for in "the agreement with Marriott has been paid by him on "each kind of nubias—double pillar and single pillar— "made by him under that license. I also granted licenses "to other persons under the patent in question, French & "Ward, of Massachusetts; Conyers, Button & Co., of Pa. "They also paid me a royalty which was intended to "average fifty cents per dozen nubias. They paid by the "pound; they paid ten cents per pound, and the nubias "averaged from 3½ to 6 pounds in weight per dozen. I "believe my royalty actually amounted to fifty cents per "dozen nubias under these agreements.*"

The Marriott & Crine license does not say in terms that the license fee of fifty cents is to be paid for the use of each patent, but this is clearly to be understood, as the three patents therein mentioned cover three different

fabrics, and Mr. Jennings testifies that the license fee was paid on *each kind* of fabrics. The other two patents mentioned in the license agreement are Design Patents Nos. 10,388 and 10,448, and both are for single pillar fabrics, as the Court will see from an inspection of these patents on the record. The testimony of Mr. Jennings is further corroborated by the license to Conyers, Button & Co. (Kibbe Record, p. 294), which states that the royalty due thereunder shall be paid on articles made under said three Letters Patent, or either of them. The license agreement with French & Ward, referred to by Mr. Jennings, was not called for, and the testimony of the witness is entirely uncontradicted, competent and sufficient.

*Wooster* v. *Simonson*, 20 *Fed. Rep.*, 316.

The contention of appellants' counsel is that the appellee could collect three times a license fee of fifty cents upon nubias, if the position taken by Mr. Jennings would be true. But he evidently overlooks in this argument that the patents enumerated in the license agreement are for difierent fabrics, two being for single pillar fabrics, and the other for a double pillar fabric, and there is nothing to show in this case that the three patents embraced in the license agreement could be contained in the same fabric. But even if that were the case, it would amount only to a waiver of more than one license fee for the use of these patents if used conjointly.

This question has already been before this Court and decided adversely to the contention of the appellants. The appellants have offered in evidence in this case the record of the suit brought by Jennings against the same defendants upon Design Patents Nos. 10,388 and 10,448, from which it appears that complainant recovered a license fee of fifty cents upon *single pillar* nubias made under those two patents. In that suit, as in the present, the same license agreements were in evidence before the Master, who found an established license fee under these two patents for the single pillar fabric, although the fact was not shown (and could